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15
16 IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 CARRIER CORPORATION,

22 Defendant.
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Civil Action No.

CONSENT DECREE

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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA"),
4 filed a complaint in this matter pursuant to Sections 106 and 107 of the
5 Comprehensive Environmental Response, Compensation, and Liability Act
6 ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

7 B. The United States in its complaint seeks, inter alia: (1) reimbursement
8 of costs incurred by EPA and the Department of Justice for response actions at the
9 Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4,
10 Los Angeles County, California (the "Site") together with accrued interest; (2)
11 performance of response work by the defendant at the Site consistent with the
12 National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP");
13 (3) penalties for each day in which Carrier Corporation, without sufficient cause,
14 willfully violated, or failed or refused to comply with, EPA's Unilateral
15 Administrative Order ("UAO") relating to the Site; and (4) punitive damages for
16 Carrier Corporation's failure, without sufficient cause, to properly provide removal
17 or remedial action pursuant to the UAO, resulting in the incurrence of response
18 costs by the United States.

19 C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
20 § 9622(j)(1), on September 28, 2000 EPA notified the federal and state natural
21 resource trustees (National Oceanic & Atmospheric Administration - U.S.
22 Department of Interior, and California Department of Fish and Game,
23 respectively) of negotiations with potentially responsible parties regarding the
24 release of hazardous substances that may have resulted in injury to the natural
25 resources under Federal and State trusteeship and encouraged the trustees to
26 participate in the negotiations.

27 D. Settling Defendants do not admit any liability to the Plaintiff arising
28 out of the transactions or occurrences alleged in the complaint, nor do they

1 acknowledge that a release or threatened release of hazardous substances at or
2 from the Site constitutes an imminent or substantial endangerment to the public
3 health or welfare or the environment.

4 E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
5 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix
6 B, by publication in the Federal Register on October 15, 1984, 49 Fed. Reg.
7 19480.

8 F. In response to a release or a substantial threat of a release of
9 hazardous substances at or from the Site, a group of potentially responsible parties
10 commenced in September 1993, a Remedial Investigation and Feasibility Study
11 ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA took over the
12 Feasibility Study in December 1996.

13 G. The group completed the Remedial Investigation Report in May 1997
14 and EPA completed the Feasibility Study Report in May 1997.

15 H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
16 published notice of the completion of the FS and of the proposed plan for remedial
17 action on January 28, 1998, in a major local newspaper of general circulation.
18 EPA provided an opportunity for written and oral comments from the public on
19 the proposed plan for remedial action. A copy of the transcript of the public
20 meeting is available to the public as part of the administrative record upon which
21 the Regional Administrator based the selection of the response action.

22 I. The decision by EPA on the remedial action to be implemented at the
23 Site is embodied in a Interim Record of Decision ("Interim ROD"), executed on
24 September 30, 1998, to which the California Department of Toxic Substances
25 Control ("DTSC") has given its concurrence. The Interim ROD includes
26 summaries of EPA's response to public comments. Notice of the final plan was
27 published in accordance with Section 117(b) of CERCLA. On June 14, 2005,
28 EPA issued an Explanation of Significant Differences ("ESD") modifying the

1 Interim ROD. Pursuant to 40 C.F.R. §§ 300.435(c)(2)(i) and 300.825(a)(2), EPA
2 made the ESD available to the public by publishing a notice summarizing the ESD
3 in a major local newspaper of general circulation, by adding the ESD to the
4 Administrative Record, and by making the Administrative Record available to the
5 public at local depositories.

6 J. Based on the information presently available to EPA, EPA believes
7 that the Work will be properly and promptly conducted by the Settling Defendants
8 if conducted in accordance with the requirements of this Consent Decree and its
9 appendices.

10 K. Solely for the purposes of Section 113(j) of CERCLA, the Remedial
11 Action selected by the Interim ROD, as modified by the ESD, and the Work to be
12 performed by the Settling Defendants, shall constitute a response action taken or
13 ordered by the President.

14 L. The Parties recognize, and the Court by entering this Consent Decree
15 finds, that this Consent Decree has been negotiated by the Parties in good faith and
16 implementation of this Consent Decree will facilitate the cleanup of the Site and
17 will avoid prolonged and complicated litigation between the Parties, and that this
18 Consent Decree is fair, reasonable, and in the public interest.

19 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

20 II. JURISDICTION

21 1. This Court has jurisdiction over the subject matter of this action
22 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
23 9613(b). This Court also has personal jurisdiction over the Settling Defendants.
24 Solely for the purposes of this Consent Decree and the underlying complaint,
25 Settling Defendants waive all objections and defenses that they may have to
26 jurisdiction of the Court or to venue in this District. Settling Defendants shall not
27 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
28 enforce this Consent Decree.

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III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Basin-wide Response Costs" shall mean costs, including but not limited to

1 direct and indirect costs, including accrued Interest, that the United States has
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 – 4.

4 “CERCLA” shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

6 “Consent Decree” shall mean this Decree and all appendices attached hereto
7 (listed in Section XXX). In the event of conflict between this Decree and any
8 appendix, this Decree shall control.

9 “Day” shall mean a calendar day unless expressly stated to be a working
10 day. “Working Day” shall mean a day other than a Saturday, Sunday, or Federal
11 holiday. In computing any period of time under this Consent Decree, where the
12 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
13 until the close of business of the next working day.

14 “DOJ” shall mean the United States Department of Justice and any of its
15 successor departments, agencies, or instrumentalities.

16 “DTSC” shall mean the California Department of Toxic Substances Control
17 and any successor departments or agencies.

18 “Effective Date” shall be the effective date of this Consent Decree as
19 provided in Paragraph 116.

20 “Eligible SEP Costs” shall include the costs of implementing the
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,
22 but do not include Settling Defendants' overhead, administrative expenses or legal
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included
24 as Eligible SEP Costs, so long as adequate documentation is provided.

25 “EPA” shall mean the United States Environmental Protection Agency and
26 any of its successor departments or agencies.

27 “Explanation of Significant Differences” or “ESD” shall mean the
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United
3 States or any third party for response actions with respect to the Site after the
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational
5 and Functional Date, or (ii) the date of issuance of a final Record of Decision for
6 the Site. Future Response Costs include, but are not limited to, Basin-wide
7 Response Costs allocated to the Site, direct and indirect costs and accrued interest
8 that the United States incurs in reviewing or developing plans, reports, and other
9 items pursuant to this Consent Decree, verifying the Work, or otherwise
10 implementing, overseeing, or enforcing this Consent Decree, including but not
11 limited to payroll costs, contractor costs, travel costs, laboratory costs, the costs
12 incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional
13 Controls; including but not limited to the cost of attorney time and any monies
14 paid to secure access or to secure or implement institutional controls including but
15 not limited to the amount of just compensation), XV (Emergency Response), and
16 Paragraph 99 of Section XXII (Work Takeover).

17 "Interest," shall mean interest at the rate specified for interest on
18 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
19 § 9507, compounded annually on October 1 of each year, in accordance with 42
20 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
21 time the interest accrues. The rate of interest is subject to change on October 1 of
22 each year.

23 "Interim ROD" shall mean the Interim Record of Decision relating to the
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of

1 wells in the intermediate and deep groundwater zones in the mid-valley area of the
2 Site to monitor vertical and horizontal contaminant migration in such groundwater
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-
4 valley shall extend from Azusa Avenue to Puente Creek.

5 "National Contingency Plan" or "NCP" shall mean the National Oil and
6 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
7 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,
8 and any amendments thereto.

9 "Operational and Functional" shall mean that the Remedial Action, or a
10 phase thereof, has been constructed and that it is performing in accordance with
11 the applicable SOW and the applicable final Remedial Design/ Remedial Action
12 Work Plans and other plans approved by EPA.

13 "Operational and Functional Date" shall mean the date that all phases of the
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

15 "Paragraph" shall mean a portion of this Consent Decree identified by an
16 arabic numeral or an upper case letter.

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
20 including Interest, that the United States or any third party has paid or incurred at
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the
23 shallow zone north of Puente Creek at the mouth of Puente Valley with
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the
25 ESD from:

- 26 (1) migrating beyond its lateral extent as measured at the time the
27 shallow zone Remedial Action containment system is Operational and
28 Functional; and

1 (2) migrating vertically into the intermediate zone;
2 for a period of 8 years from the Operational and Functional Date.

3 "Plaintiff" shall mean the United States.

4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

6 "Remedial Action" shall mean those activities to be undertaken by Settling
7 Defendants to implement the shallow zone remedy north of Puente Creek and
8 Mid-Valley Monitoring, in accordance with the Interim ROD as modified by the
9 ESD, the applicable SOW, and the applicable Remedial Design/ Remedial Action
10 Work Plans and other plans approved by EPA.

11 "Remedial Action Work Plan" shall mean the document developed pursuant
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any
13 amendments thereto.

14 "Remedial Design" shall mean those activities to be undertaken by Settling
15 Defendants to develop the final plans and specifications for the Remedial Action
16 pursuant to the Remedial Design Work Plan.

17 "Remedial Design Work Plan" shall mean the document developed pursuant
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any
19 amendments thereto.

20 "Section" shall mean a portion of this Consent Decree identified by a
21 Roman numeral.

22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental
23 Project as described in Paragraph 62, or any alternative Supplemental
24 Environmental Project approved by EPA pursuant to Paragraph 63.

25 "SEP Implementation Plan" shall the mean the document describing the
26 SEP and setting forth those activities required to implement the SEP.

27 "Settling Defendants" shall mean Carrier Corporation and United
28 Technologies Corporation.

1 “Site” shall mean the area of groundwater contamination in Los Angeles
2 County, California, located in the geographic area designated on the National
3 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.
4 19480 (1984)], and identified as the Puente Valley Operable Unit.

5 “State” shall mean the California Department of Toxic Substances Control
6 (“DTSC”).

7 “Statement of Work” or “SOW” shall mean the statement of work for
8 implementation of the Remedial Design and Remedial Action at the Site, as set
9 forth in Appendix D to this Consent Decree and any modifications made in
10 accordance with this Consent Decree.

11 “Supervising Contractor” shall mean the principal contractor retained by the
12 Settling Defendants to supervise and direct the implementation of the Work under
13 this Consent Decree.

14 “Unilateral Administrative Order Docket No. 2001-20” or “UAO Docket
15 No. 2001-20” shall mean the order issued by EPA to Carrier Corporation on or
16 about September 13, 2001.

17 “United States” shall mean the United States of America.

18 “Waste Material” shall mean (1) any “hazardous substance” under Section
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste”
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous
22 material” under the California Hazardous Waste Control Act Section 25100 et seq.

23 “Work” shall mean all activities Settling Defendants are required to perform
24 under this Consent Decree, except those required by Section XXVI (Retention of
25 Records) and Section XVIII (Supplemental Environmental Projects).

26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering
28 into this Consent Decree are to protect public health or welfare or the environment

1 at the Site by the implementation of response actions at the Site by Settling
2 Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims
3 of Plaintiff against Settling Defendants as provided in this Consent Decree.

4 6. Commitments by Settling Defendants.

5 a. Settling Defendants shall finance and perform the Remedial
6 Action in accordance with this Consent Decree, the Interim ROD as modified by
7 the ESD, the SOW, and all work plans and other plans, standards, specifications,
8 and schedules set forth herein or developed by Settling Defendants and approved
9 by EPA pursuant to this Consent Decree. Settling Defendants shall reimburse the
10 United States for its costs as provided in this Consent Decree. Settling Defendants
11 shall also conduct a SEP, reimburse EPA for oversight costs incurred in
12 connection with the SEP, and pay penalties in accordance with this Consent
13 Decree in settlement of claims for failure to comply with UAO Docket No. 2001-
14 20.

15 b. The obligations of Settling Defendants to finance and perform
16 the Work and of Settling Defendants to pay amounts owed the United States under
17 this Consent Decree are joint and several.

18 7. Compliance With Applicable Law. All activities undertaken by
19 Settling Defendants pursuant to this Consent Decree shall be performed in
20 accordance with the requirements of all applicable federal and state laws and
21 regulations. Settling Defendants must also comply with all applicable or relevant
22 and appropriate requirements of all federal and state environmental laws as set
23 forth in the Interim ROD as modified by the ESD, and the SOW. The activities
24 conducted pursuant to this Consent Decree, if approved by EPA, shall be
25 considered to be consistent with the NCP.

26 8. Permits.

27 a. As provided in Section 121(e) of CERCLA and Section
28 300.400(e) of the NCP, no permit shall be required for any portion of the Work

1 conducted entirely on-Site (i.e., within the areal extent of contamination or in very
2 close proximity to the contamination and necessary for implementation of the
3 Work). Where any portion of the Work that is not on-Site requires a federal or
4 state permit or approval, Settling Defendants shall submit timely and complete
5 applications and take all other actions necessary to obtain all such permits or
6 approvals.

7 b. The Settling Defendants may seek relief under the provisions
8 of Section XIX (Force Majeure) of this Consent Decree for any delay in the
9 performance of the Work or in the performance of the SEP described in Section
10 XVIII resulting from a failure to obtain, or a delay in obtaining, any permit
11 required for the Work or for performance of the SEP described in Section XVIII.

12 c. This Consent Decree is not, and shall not be construed to be, a
13 permit issued pursuant to any federal or state statute or regulation.

14 VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

15 9. Selection of Supervising Contractor.

16 a. All aspects of the Work to be performed by Settling Defendants
17 pursuant to Sections VI (Performance of the Work by Settling Defendants), VII
18 (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and
19 XV (Emergency Response) of this Consent Decree shall be under the direction and
20 supervision of the Supervising Contractor, the selection of which shall be subject
21 to disapproval by EPA. Within 10 Days after the lodging of this Consent Decree,
22 Settling Defendants shall notify EPA in writing of the name, title, and
23 qualifications of any contractor proposed to be the Supervising Contractor. With
24 respect to any contractor proposed to be the Supervising Contractor, Settling
25 Defendants shall demonstrate that the proposed contractor has a quality system
26 that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for
27 Quality Systems for Environmental Data Collection and Environmental
28 Technology Programs," (American National Standard, January 5, 1995), by

1 submitting a copy of the proposed contractor's Quality Management Plan (QMP).
2 The QMP should be prepared in accordance with "EPA Requirements for Quality
3 Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent
4 documentation as determined by EPA. EPA will issue a notice of disapproval or
5 an authorization to proceed. If at any time thereafter, Settling Defendants propose
6 to change a Supervising Contractor, Settling Defendants shall give such notice to
7 EPA and must obtain an authorization to proceed from EPA before the new
8 Supervising Contractor performs, directs, or supervises any Work under this
9 Consent Decree.

10 b. If EPA disapproves a proposed Supervising Contractor, EPA
11 will notify Settling Defendants in writing. Settling Defendants shall submit to
12 EPA a list of contractors, including the qualifications of each contractor, that
13 would be acceptable to them within 30 Days of receipt of EPA's disapproval of the
14 contractor previously proposed. EPA will provide written notice of the names of
15 any contractor(s) that it disapproves and an authorization to proceed with respect
16 to any of the other contractors. Settling Defendants may select any contractor
17 from that list that is not disapproved and shall notify EPA of the name of the
18 contractor selected within 21 Days of EPA's authorization to proceed.

19 c. If EPA fails to provide written notice of its authorization to
20 proceed or disapproval as provided in this Paragraph and this failure prevents
21 Settling Defendants from meeting one or more deadlines in a plan approved by the
22 EPA pursuant to this Consent Decree, Settling Defendants may seek relief under
23 the provisions of Section XIX (Force Majeure) hereof.

24 10. Remedial Design.

25 a. A work plan for the design of the Remedial Action at the Site
26 ("Remedial Design Work Plan" or "RD Work Plan") has been submitted by
27 Settling Defendants and approved by EPA.

28 b. Settling Defendants shall implement the Remedial Design

1 Work Plan in accordance with the schedule therein. The Settling Defendants shall
2 submit to EPA and DTSC all plans, submittals and other deliverables required
3 under the approved Remedial Design Work Plan in accordance with the approved
4 schedule for review and approval pursuant to Section XI (EPA Approval of Plans
5 and Other Submissions).

6 11. Remedial Action.

7 a. Within 60 Days after the approval of the final design submittal,
8 Settling Defendants shall submit to EPA and DTSC a work plan for the
9 performance of the Remedial Action at the Site ("Remedial Action Work Plan").
10 The Remedial Action Work Plan shall provide for construction and
11 implementation of the Remedial Action. Upon its approval by EPA, the Remedial
12 Action Work Plan shall be incorporated into and become enforceable under this
13 Consent Decree. At the same time as they submit the Remedial Action Work Plan,
14 Settling Defendants shall submit to EPA and DTSC a Health and Safety Plan for
15 field activities required by the Remedial Action Work Plan which conforms to the
16 applicable Occupational Safety and Health Administration and EPA requirements
17 including, but not limited to, 29 C.F.R. § 1910.120.

18 b. The Remedial Action Work Plan shall conform to the
19 requirements set forth in the SOW.

20 c. Upon approval of the Remedial Action Work Plan by EPA,
21 after a reasonable opportunity for review and comment by DTSC, Settling
22 Defendants shall implement the activities required under the Remedial Action
23 Work Plan. The Settling Defendants shall submit to EPA and DTSC all plans,
24 submittals, or other deliverables required under the approved Remedial Action
25 Work Plan in accordance with the approved schedule for review and approval
26 pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless
27 otherwise directed by EPA, Settling Defendants shall not commence physical
28 Remedial Action activities at the Site prior to approval of the Remedial Action

1 Work Plan.

2 12. The Settling Defendants shall continue to implement the Remedial
3 Action for a period of 8 years from the Operational and Functional Date.

4 13. Modification of the SOW or Related Work Plans.

5 a. If EPA determines that modification to the Work specified in
6 the SOW or in work plans developed pursuant to the SOW is necessary to achieve
7 and maintain the Performance Criteria, to avoid exceeding the discharge ARARs,
8 or to implement Mid-Valley Monitoring, as set forth in the Interim ROD, as
9 modified by the ESD, EPA may require that such modification be incorporated in
10 the SOW or such work plans, provided, however, that a modification may only be
11 required pursuant to this Paragraph to the extent that it is consistent with the scope
12 of the shallow zone remedy north of Puente Creek and Mid-Valley Monitoring
13 selected in the Interim ROD, as modified by the ESD.

14 b. For the purposes of this Paragraph 13 only, the "scope of the
15 shallow zone remedy north of Puente Creek and Mid-Valley Monitoring selected
16 in the Interim ROD, as modified by the ESD" is: 1) the achievement of the
17 Performance Criteria; 2) compliance with discharge ARARs; 3) Mid-Valley
18 Monitoring; and 4) all work necessary to bring the containment system to the point
19 of being Operational & Functional.

20 c. If Settling Defendants object to (i) any modification determined
21 by EPA to be necessary pursuant to this Paragraph, (ii) any response actions
22 determined by EPA to be necessary pursuant to the SOW to come back into
23 compliance with the Performance Criteria or discharge ARARs, or (iii) any
24 response actions that are necessary where EPA has determined pursuant to the
25 SOW that it is more likely than not that the Performance Criteria or the treatment
26 plant discharge ARARs will be exceeded if such actions are not undertaken, they
27 may seek dispute resolution pursuant to Section XX (Dispute Resolution),
28 Paragraph 79 (record review). The SOW or related work plans shall be modified

1 in accordance with final resolution of the dispute.

2 d. Settling Defendants shall implement any work required by any
3 modifications incorporated in the SOW or in work plans developed pursuant to the
4 SOW in accordance with this Paragraph.

5 e. Nothing in this Paragraph shall be construed to limit EPA's
6 authority to require performance of further response actions as otherwise provided
7 in this Consent Decree.

8 14. Settling Defendants acknowledge and agree that nothing in this
9 Consent Decree, the SOW, the Remedial Design Work Plan, or Remedial Action
10 Work Plan constitutes a warranty or representation of any kind by Plaintiff that
11 compliance with the work requirements set forth in the SOW and the Work Plans
12 will achieve the Performance Criteria.

13 15. a. Settling Defendants shall, prior to any off-Site shipment of
14 Waste Material to an out-of-state waste management facility, provide written
15 notification to the appropriate state environmental official in the receiving
16 facility's state and to the EPA Project Coordinator of such shipment of Waste
17 Material. However, this notification requirement shall not apply to any off-Site
18 shipments when the total volume of all such shipments will not exceed 10 cubic
19 yards.

20 (1) Settling Defendants shall include in the written
21 notification the following information, where available: (1) the name and location
22 of the facility to which the Waste Material is to be shipped; (2) the type and
23 quantity of the Waste Material to be shipped; (3) the expected schedule for the
24 shipment of the Waste Material; and (4) the method of transportation. Settling
25 Defendants shall notify the state in which the planned receiving facility is located
26 of major changes in the shipment plan, such as a decision to ship the Waste
27 Material to another facility within the same state, or to a facility in another state.

28 (2) The identity of the receiving facility and state will be

1 determined by Settling Defendants following the award of the contract for
2 Remedial Action construction.

3 Settling Defendants shall provide the information required by this
4 Subparagraph as soon as practicable after the award of the contract and before the
5 Waste Material is actually shipped.

6 b. Before shipping any hazardous substances, pollutants, or
7 contaminants to an off-Site receiving facility, Settling Defendants shall obtain
8 EPA's certification that the proposed receiving facility is operating in compliance
9 with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440.
10 Settling Defendants shall only send hazardous substances, pollutants, or
11 contaminants to an off-Site receiving facility that complies with the requirements
12 of the statutory provision and regulations cited in the preceding sentence.

13 VII. REMEDY REVIEW

14 16. Periodic Review. Until such time as EPA issues a Certification of
15 Completion of the Remedial Action pursuant to Paragraph 51, Settling Defendants
16 shall conduct studies and investigations consistent with EPA's June 2001
17 "Comprehensive Five-Year Review Guidance," OSWER No. 9355.7-03B-P, as
18 modified or amended by any subsequent guidance, as determined by EPA to be
19 necessary for EPA to conduct reviews of whether the Remedial Action is
20 protective of human health and the environment at least every five years after
21 commencement of the Remedial Action as required by Section 121(c) of CERCLA
22 and any applicable regulations.

23 17. EPA Selection of Further Response Actions. If EPA determines, at
24 any time, that the Remedial Action is not protective of human health and the
25 environment, EPA may select further response actions for the Site in accordance
26 with the requirements of CERCLA and the NCP.

27 18. Opportunity To Comment. Settling Defendants, and, if required by
28 Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an

1 opportunity to comment on any further response actions proposed by EPA as a
2 result of the review conducted pursuant to Section 121(c) of CERCLA and to
3 submit written comments for the record during the comment period.

4 VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

5 19. Settling Defendants shall use quality assurance, quality control, and
6 chain of custody procedures for all treatability, design, compliance and monitoring
7 samples in accordance with "EPA Requirements for Quality Assurance Project
8 Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality
9 Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and
10 subsequent amendments to such guidelines upon notification by EPA to Settling
11 Defendants of such amendment. Amended guidelines shall apply only to
12 procedures conducted after such notification. Prior to the commencement of any
13 monitoring project under this Consent Decree, Settling Defendants shall submit to
14 EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent
15 with the SOW, the NCP and applicable guidance documents. If relevant to the
16 proceeding, the Parties agree that validated sampling data generated in accordance
17 with the QAPP(s) and reviewed and approved by EPA shall be admissible as
18 evidence, without objection, in any proceeding under this Consent Decree.
19 Settling Defendants shall ensure that EPA and State personnel and their authorized
20 representatives are allowed access at reasonable times to all laboratories utilized
21 by Settling Defendants in implementing this Consent Decree. In addition, Settling
22 Defendants shall ensure that such laboratories shall analyze all samples submitted
23 by EPA pursuant to the QAPP for quality assurance monitoring. Settling
24 Defendants shall ensure that the laboratories they utilize for the analysis of
25 samples taken pursuant to this Consent Decree perform all analyses according to
26 accepted EPA methods. Accepted EPA methods consist of those methods which
27 are documented in the "Contract Lab Program Statement of Work for Inorganic
28 Analysis" and the "Contract Lab Program Statement of Work for Organic

1 Analysis," dated February 1988, and any amendments made thereto during the
2 course of the implementation of this Consent Decree; however, upon approval by
3 EPA, after opportunity for review and comment by DTSC, Settling Defendants
4 may use other analytical methods which are as stringent as or more stringent than
5 the CLP- approved methods. Settling Defendants shall ensure that all laboratories
6 they use for analysis of samples taken pursuant to this Consent Decree participate
7 in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use
8 laboratories that have a documented Quality System which complies with
9 ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for
10 Environmental Data Collection and Environmental Technology Programs,"
11 (American National Standard, January 5, 1995), and "EPA Requirements for
12 Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or
13 equivalent documentation as determined by EPA. EPA may consider laboratories
14 accredited under the National Environmental Laboratory Accreditation Program
15 (NELAP) as meeting the Quality System requirements. Settling Defendants shall
16 ensure that all field methodologies utilized in collecting samples for subsequent
17 analysis pursuant to this Decree will be conducted in accordance with the
18 procedures set forth in the QAPP approved by EPA.

19 20. Upon request, Settling Defendants shall allow split or duplicate
20 samples to be taken by EPA or its authorized representatives. Settling Defendants
21 shall notify EPA not less than 28 Days in advance of any sample collection
22 activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the
23 right to take any additional samples that EPA deems necessary. Upon request,
24 EPA shall allow Settling Defendants to take split or duplicate samples of any
25 samples they take as part of the Plaintiff's oversight of Settling Defendants'
26 implementation of the Work. EPA will provide Settling Defendants copies of
27 validated split sampling results.

28 21. Settling Defendants shall submit to EPA the results of all sampling

1 and/or tests or other data obtained or generated by or on behalf of Settling
2 Defendants with respect to the Site and/or the implementation of this Consent
3 Decree, unless EPA agrees otherwise. Settling Defendants shall also provide one
4 copy of such results to any party performing work at the Site at the direction of
5 EPA who is obligated or directed to provide substantially the same reports to
6 Settling Defendants, unless EPA agrees otherwise.

7 22. Notwithstanding any provision of this Consent Decree, the United
8 States hereby retains all of its information gathering and inspection authorities and
9 rights, including enforcement actions related thereto, under CERCLA, RCRA and
10 any other applicable statutes or regulations.

11 IX. ACCESS AND INSTITUTIONAL CONTROLS

12 23. If the Site, or any other property where access or land or water use
13 restrictions are needed to implement response actions at the Site, is owned or
14 controlled by any of the Settling Defendants, such Settling Defendant shall:

15 a. provide (i) the United States, (ii) DTSC, (iii) the other Settling
16 Defendant, and (iv) persons performing response actions under EPA's direction,
17 together with their respective representatives and contractors, with access at all
18 reasonable times to the Site, or such other property, for the purpose of conducting
19 any activity related to the Site including, but not limited to, the following
20 activities:

- 21 (1) Monitoring the Work;
- 22 (2) Verifying any data or information submitted to the
23 United States;
- 24 (3) Conducting investigations relating to contamination at or
25 near the Site;
- 26 (4) Obtaining samples;
- 27 (5) Assessing the need for planning or implementing
28 additional response actions at or near the Site;

- 1 (6) Assessing implementation of quality assurance and
2 quality control practices as defined in the approved Quality Assurance
3 Project Plans;
- 4 (7) Implementing the Work pursuant to the conditions set
5 forth in Paragraph 99 of this Consent Decree;
- 6 (8) Inspecting and copying records, operating logs, contracts,
7 or other documents maintained or generated by Settling Defendants or their
8 agents, consistent with Section XXV (Access to Information);
- 9 (9) Assessing Settling Defendants' compliance with this
10 Consent Decree; and
- 11 (10) Determining whether the Site or other property is being
12 used in a manner that is prohibited or restricted, or that may need to be prohibited
13 or restricted, by or pursuant to this Consent Decree;
- 14 b. refrain from using the Site, or such other property, in any
15 manner that would interfere with or adversely affect the implementation, integrity,
16 or protectiveness of remedial measures taken at the Site; and
- 17 c. execute and record in the Recorder's Office of Los Angeles
18 County, State of California, an easement, running with the land, that (i) grants a
19 right of access for the purpose of conducting any activity related to response
20 actions at the Site including, but not limited to, those activities listed in
21 Paragraph 23.a of this Consent Decree, and (ii) grants the right to enforce the land
22 or water use restrictions listed in Paragraph 23.b of this Consent Decree, or other
23 restrictions that EPA determines are necessary to implement, ensure non-
24 interference with, or ensure the protectiveness of remedial measures taken at the
25 Site. Such Settling Defendant shall grant the access rights and the rights to
26 enforce the land/water use restrictions to one or more of the following entities, and
27 to their respective representatives and contractors, as determined by EPA: (i) the
28 United States, on behalf of EPA, (ii) DTSC, (iii) the other Settling Defendant, (iv)

1 persons performing response actions under EPA's direction, and/or (v) other
2 appropriate grantees, as determined by EPA. Such Settling Defendant shall,
3 within 45 Days of entry of this Consent Decree, submit to EPA for review and
4 approval with respect to such property:

5 (1) A draft easement, in substantially the form attached
6 hereto as Appendix F, that is enforceable under the laws of the State of
7 California, and

8 (2) a current title insurance commitment or some other
9 evidence of title acceptable to EPA, which shows title to the land described
10 in the easement to be free and clear of all prior liens and encumbrances
11 (except when those liens or encumbrances are approved by EPA or when,
12 despite best efforts, Settling Defendant is unable to obtain release or
13 subordination of such prior liens or encumbrances).

14 Within 15 Days of EPA's approval and acceptance of the easement and the title
15 evidence, such Settling Defendant shall update the title search and, if it is
16 determined that nothing has occurred since the effective date of the commitment to
17 affect the title adversely, record the easement with the Recorder's Office of Los
18 Angeles County. Within 30 Days of recording the easement, such Settling
19 Defendants shall provide EPA with a final title insurance policy, or other final
20 evidence of title acceptable to EPA, and a certified copy of the original recorded
21 easement showing the clerk's recording stamps. If the easement is to be conveyed
22 to the United States, the easement and title evidence (including final title
23 evidence) shall be prepared in accordance with the U.S. Department of Justice
24 Title Standards 2001, and approval of the sufficiency of title must be obtained as
25 required by 40 U.S.C. § 255.

26 24. If any other property where access and/or land/water use restrictions
27 are needed to implement this Consent Decree is owned or controlled by persons
28 other than any of the Settling Defendants, Settling Defendants shall use best

1 efforts to secure from such persons with respect to such property:

2 a. an agreement to provide access thereto for the following
3 entities and for their respective representatives and contractors: (i) the United
4 States, including EPA, (ii) DTSC, (iii) the Settling Defendants, and (iv) persons
5 performing response actions under EPA's direction, all for the purpose of
6 conducting any activity related to any response action at the Site, including, but
7 not limited to, those activities listed in Paragraph 23.a of this Consent Decree;

8 b. an agreement, enforceable by the Settling Defendants and the
9 United States, to refrain from using such other property, in any manner that would
10 interfere with or adversely affect the implementation, integrity, or protectiveness
11 of remedial measures taken at the Site; and

12 c. the execution and recordation in the Recorder's Office of Los
13 Angeles County, State of California, of an easement, running with the land, that (i)
14 grants a right of access for the purpose of conducting any activity related to the
15 Site including, but not limited to, all treatment facilities, pipelines, and wells used
16 to implement the Work as well as those activities listed in Paragraph 23.a of this
17 Consent Decree, and (ii) grants the right to enforce the land/water use restrictions
18 listed in Paragraph 23.b of this Consent Decree, or other restrictions that EPA
19 determines are necessary to implement, ensure non-interference with, or ensure the
20 protectiveness of remedial measures taken at the Site. The access rights and/or
21 rights to enforce land/water use restrictions shall be granted to one or more of the
22 following entities and to their respective representatives and contractors, as
23 determined by EPA: (i) the United States, including EPA, (ii) DTSC, (iii) the
24 Settling Defendants, (iv) persons performing response actions under EPA's
25 direction, and/or (v) other appropriate grantees, as determined by EPA. Within 45
26 Days of approval of the final Remedial Design, Settling Defendants shall submit
27 to EPA for review and approval with respect to such property:

28 (1) A draft easement, in substantially the form attached

1 hereto as Appendix F, that is enforceable under the laws of the State of
2 California, and

3 (2) a current title insurance commitment, or some other
4 evidence of title acceptable to EPA, which shows title to the land described
5 in the easement to be free and clear of all prior liens and encumbrances that
6 could impact the implementation of the Work (except when those liens or
7 encumbrances are approved by EPA or when, despite best efforts, Settling
8 Defendants are unable to obtain release or subordination of such prior liens
9 or encumbrances).

10 Within 15 Days of EPA's approval and acceptance of the easement and the title
11 evidence, Settling Defendants shall update the title search and, if it is determined
12 that nothing has occurred since the effective date of the commitment to affect the
13 title adversely, the easement shall be recorded with the Recorder's Office of Los
14 Angeles County. Within 30 Days of the recording of the easement, Settling
15 Defendants shall provide EPA with a final title insurance policy, or other final
16 evidence of title acceptable to EPA, and a certified copy of the original recorded
17 easement showing the clerk's recording stamps. If an easement is to be conveyed
18 to the United States, the easement and title evidence (including final title
19 evidence) shall be prepared in accordance with the U.S. Department of Justice
20 Title Standards 2001, and approval of the sufficiency of title must be obtained as
21 required by 40 U.S.C. § 255.

22 25. EPA may determine, in its unreviewable discretion, that the
23 requirements of Paragraph 24 are not necessary because an existing administrative
24 order, agreement or consent decree provides adequate access to address future
25 response actions anticipated at the Site.

26 26. For purposes of Paragraphs 23 and 24 of this Consent Decree, "best
27 efforts" includes the payment of reasonable sums of money in consideration of
28 access, access easements, land or water use restrictions, restrictive easements, or

1 an agreement to release or subordinate a prior lien or encumbrance. If (a) any
2 access or land or water use restriction agreements required by Paragraphs 24.a or
3 24.b of this Consent Decree are not obtained within 45 Days of the date of
4 approval of the final Remedial Design, (b) any access easements or restrictive
5 easements required by Paragraph 24.c of this Consent Decree are not submitted to
6 EPA in draft form within 45 Days of the date of entry of this Consent Decree, or
7 (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph
8 23.c.(1) or Paragraph 24.c.(1) from the holder of a prior lien or encumbrance to
9 release or subordinate such lien or encumbrance to the easement being created
10 pursuant to this consent decree within 45 Days of the date of approval of the final
11 Remedial Design, Settling Defendants shall promptly notify the United States in
12 writing, and shall include in that notification a summary of the steps that Settling
13 Defendants have taken to attempt to comply with Paragraph 23 or 24 of this
14 Consent Decree. The United States may, as it deems appropriate, assist Settling
15 Defendants in obtaining access or land/water use restrictions, either in the form of
16 contractual agreements or in the form of easements running with the land, or in
17 obtaining the release or subordination of a prior lien or encumbrance. Settling
18 Defendants shall reimburse the United States in accordance with the procedures in
19 Section XVI (Payments for Response Costs and Civil Penalties), for all costs
20 incurred, direct or indirect, by the United States in obtaining such access,
21 land/water use restrictions, and/or the release/subordination of prior liens or
22 encumbrances including, but not limited to, the cost of attorney time and the
23 amount of monetary consideration paid or just compensation.

24 27. If EPA determines that land or water use restrictions in the form of
25 state or local laws, regulations, ordinances or other governmental controls are
26 needed to implement the Remedial Action, or ensure non-interference therewith,
27 Settling Defendants shall cooperate with EPA's efforts to secure such
28 governmental controls.

1 28. Notwithstanding any provision of this Consent Decree, the United
2 States retains all of its access authorities and rights, as well as all of its rights to
3 require land or water use restrictions, including enforcement authorities related
4 thereto, under CERCLA, RCRA and any other applicable statute or regulations.

5 X. REPORTING REQUIREMENTS

6 29. In addition to any other requirement of this Consent Decree, Settling
7 Defendants shall submit to EPA, DTSC, and any party performing work at the Site
8 at the direction of EPA, written bi-monthly progress reports that: (a) describe the
9 actions which have been taken toward achieving compliance with this Consent
10 Decree during the previous two months; (b) include a summary of all results of
11 sampling and tests and all other data received or generated by Settling Defendants
12 or their contractors or agents in the previous two months; (c) identify all work
13 plans, plans and other deliverables required by this Consent Decree completed and
14 submitted during the previous two months; (d) describe all actions, including, but
15 not limited to, data collection and implementation of work plans, which are
16 scheduled for the next six weeks and provide other information relating to the
17 progress of construction, including but not limited to critical path diagrams, Gantt
18 charts and Pert charts; (e) include information regarding the percentage of
19 completion, unresolved delays encountered or anticipated that may affect the
20 future schedule for implementation of the Work, and a description of efforts made
21 to mitigate those delays or anticipated delays; (f) include any modifications to the
22 work plans or other schedules that Settling Defendants have proposed to EPA or
23 that have been approved by EPA; and (g) describe all activities undertaken in
24 support of the Community Relations Plan during the previous two months and
25 those to be undertaken in the next six weeks. Settling Defendants shall submit
26 these progress reports to EPA, DTSC and any party performing work at the Site at
27 the direction of EPA, by the tenth Day of every second month following the
28 lodging of this Consent Decree until EPA approves the Final Construction

1 Inspection Report. If requested by EPA, Settling Defendants shall also provide
2 briefings for EPA to discuss the progress of the Work. After EPA approves the
3 Final Construction Inspection Report, Settling Defendants shall submit Quarterly
4 Compliance Monitoring Reports and Annual Performance Evaluation Reports
5 pursuant to the SOW. Settling Defendants shall provide one copy of the bi-
6 monthly progress reports and one copy of the Quarterly Compliance Monitoring
7 Reports and the Annual Performance Evaluation Reports to any party performing
8 work at the Site under the direction of EPA who is obligated or directed to provide
9 substantially the same reports to Settling Defendants.

10 30. The Settling Defendants shall notify EPA of any significant change in
11 the schedule described in the bi-monthly progress reports, Quarterly Compliance
12 Monitoring Reports and Annual Performance Evaluation Reports for the
13 performance of any activity, including, but not limited to, data collection and
14 implementation of work plans, no later than seven Days prior to the performance
15 of the activity.

16 31. Within 30 Days after the end of each calendar-year six-month period
17 (i.e., by July 30 and January 30) after lodging of this Consent Decree and until
18 Settling Defendants submit the SEP Completion Report pursuant to Paragraph 65,
19 Settling Defendants shall submit a report for the preceding period that shall
20 include a discussion of Settling Defendants' progress in satisfying its obligations
21 in connection with the SEP under Section XVIII (Supplemental Environmental
22 Projects) of this Decree including, at a minimum, a narrative description of
23 activities undertaken, compliance with the schedules or milestones set forth in the
24 SEP Implementation Plan, and a summary of costs incurred since the previous
25 report.

26 32. Upon the occurrence of any event during performance of the Work
27 that Settling Defendants are required to report pursuant to Section 103 of
28 CERCLA or Section 304 of the Emergency Planning and Community Right-to-

1 know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of
2 such event orally notify the EPA Project Coordinator or the Alternate EPA Project
3 Coordinator (in the event of the unavailability of the EPA Project Coordinator), or,
4 in the event that neither the EPA Project Coordinator or Alternate EPA Project
5 Coordinator is available, the Emergency Response Section, Region 9, United
6 States Environmental Protection Agency. These reporting requirements are in
7 addition to the reporting required by CERCLA Section 103 or EPCRA Section
8 304.

9 33. Within 20 Days of the onset of such an event, Settling Defendants
10 shall furnish to Plaintiff a written report, signed by the Settling Defendants'
11 Project Coordinator, setting forth the events which occurred and the measures
12 taken, and to be taken, in response thereto. Within 30 Days of the conclusion of
13 such an event, Settling Defendants shall submit a report setting forth all actions
14 taken in response thereto.

15 34. Settling Defendants shall submit 4 copies of all plans, reports, and
16 data required by the SOW, the Remedial Design Work Plan, the Remedial Action
17 Work Plan, or any other approved plans to EPA in accordance with the schedules
18 set forth in such plans. Settling Defendants shall simultaneously submit 3 copies
19 of all such plans, reports and data to DTSC. Settling Defendants shall also submit
20 in electronic form (e.g. on compact disc) all portions of any report or other
21 deliverable Settling Defendants are required to submit pursuant to the provisions
22 of this Consent Decree.

23 35. All reports and other documents submitted by Settling Defendants to
24 EPA (other than the bi-monthly progress reports referred to above) which purport
25 to document Settling Defendants' compliance with the terms of this Consent
26 Decree shall be signed by an authorized representative of the Settling Defendants.

27 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

28 36. After review of any plan, report or other item that is required to be

1 submitted for approval pursuant to this Consent Decree, EPA, after reasonable
2 opportunity for review and comment by DTSC, shall: (a) approve, in whole or in
3 part, the submission; (b) approve the submission upon specified conditions; (c)
4 modify the submission to cure the deficiencies; (d) disapprove, in whole or in part,
5 the submission, directing that the Settling Defendants modify the submission; or
6 (e) any combination of the above. However, EPA shall not modify a submission
7 without first providing Settling Defendants at least one notice of deficiency and an
8 opportunity to cure within 21 Days or such longer period as EPA determines to be
9 reasonable, except where to do so would cause serious disruption to the Work or
10 where a previous submission or submissions have been disapproved due to
11 material defects, and the deficiencies in the submission or submissions under
12 consideration are due to a bad faith lack of effort to submit an acceptable
13 deliverable.

14 37. In the event of approval, approval upon conditions, or modification
15 by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendants shall proceed
16 to take any action required by the plan, report, or other item as approved or
17 modified by EPA, subject only to their right to invoke dispute resolution
18 procedures set forth in Section XX (Dispute Resolution) with respect to the
19 modifications or conditions made by EPA. In the event that EPA modifies the
20 submission to cure deficiencies pursuant to Paragraph 36(c) and the submission
21 had a material defect, EPA retains its right to seek Stipulated Penalties, as
22 provided in Section XXI (Stipulated Penalties).

23 38. Resubmission of Plans.

24 a. Upon receipt of a notice of disapproval pursuant to
25 Paragraph 36(d), Settling Defendants shall, within 21 Days or such longer time as
26 specified by EPA in such notice, correct the deficiencies and resubmit the plan,
27 report, or other item for approval. Any Stipulated Penalties applicable to the
28 submission, as provided in Section XXI (Stipulated Penalties), shall accrue during

1 the 21-Day period or otherwise specified period but shall not be payable unless the
2 resubmission is disapproved or modified due to a material defect as provided in
3 Paragraphs 39 and 40.

4 b. Notwithstanding the receipt of a notice of disapproval pursuant
5 to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to
6 take any action required by any non-deficient portion of the submission.

7 Implementation of any non-deficient portion of a submission shall not relieve
8 Settling Defendants of any liability for Stipulated Penalties under Section XXI
9 (Stipulated Penalties).

10 39. In the event that a resubmitted plan, report, or other item, or portion
11 thereof, is disapproved by EPA, EPA may again require the Settling Defendants to
12 correct the deficiencies, in accordance with the preceding Paragraphs. EPA also
13 retains the right to modify or develop the plan, report, or other item. Settling
14 Defendants shall implement any such plan, report, or item as modified or
15 developed by EPA, subject only to their right to invoke the procedures set forth in
16 Section XX (Dispute Resolution).

17 40. If upon resubmission, a plan, report, or item is disapproved or
18 modified by EPA due to a material defect, Settling Defendants shall be deemed to
19 have failed to submit such plan, report, or item timely and adequately, unless
20 Settling Defendants invoke the dispute resolution procedures set forth in Section
21 XX (Dispute Resolution), and EPA's action is overturned pursuant to that Section.
22 The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated
23 Penalties) shall govern the implementation of the Work and accrual and payment
24 of any Stipulated Penalties during Dispute Resolution. If EPA's disapproval or
25 modification is upheld, Stipulated Penalties shall accrue for such violation from
26 the date on which the initial submission was originally required, as provided in
27 Section XXI (Stipulated Penalties).

28 41. All plans, reports, and other items required to be submitted to EPA

1 under this Consent Decree shall, upon approval or modification by EPA, be
2 enforceable under this Consent Decree. In the event EPA approves or modifies a
3 portion of a plan, report, or other item required to be submitted to EPA under this
4 Consent Decree, the approved or modified portion shall be enforceable under this
5 Consent Decree.

6 XII. PROJECT COORDINATORS

7 42. Within 20 Days of lodging this Consent Decree, Settling Defendants
8 and EPA will notify each other, in writing, of the name, address and telephone
9 number of their respective designated Project Coordinators and Alternate Project
10 Coordinators. If a Project Coordinator or Alternate Project Coordinator initially
11 designated is changed, the identity of the successor will be given to the other
12 Parties at least 5 Working Days before the changes occur, unless impracticable,
13 but in no event later than the actual Day the change is made. The Settling
14 Defendants' Project Coordinator shall be subject to disapproval by EPA and shall
15 have the technical expertise sufficient to adequately oversee all aspects of the
16 Work. The Settling Defendants' Project Coordinator shall not be an attorney for
17 any of the Settling Defendants in this matter. He or she may assign other
18 representatives, including other contractors, to serve as a Site representative for
19 oversight of performance of daily operations during remedial activities.

20 43. Plaintiff may designate other representatives, including, but not
21 limited to, EPA and DTSC employees, and federal and state contractors and
22 consultants, to observe and monitor the progress of the Work undertaken pursuant
23 to this Consent Decree. EPA's Project Coordinator and Alternate Project
24 Coordinator shall have the authority lawfully vested in a Remedial Project
25 Manager (RPM) and an On-Scene Coordinator (OSC) by the National
26 Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or
27 Alternate Project Coordinator shall have authority, consistent with the National
28 Contingency Plan, to halt any Work required by this Consent Decree and to take

1 any necessary response action when s/he determines that conditions at the Site
2 constitute an emergency situation or may present an immediate threat to public
3 health or welfare or the environment due to release or threatened release of Waste
4 Material.

5 44. EPA's Project Coordinator and Settling Defendants' Project
6 Coordinator will meet in person or confer telephonically on a monthly basis unless
7 EPA determines that less frequent meetings or conferences are required.

8 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

9 45. Within 30 Days of entry of this Consent Decree, Settling Defendants
10 shall establish and maintain financial security in the amount of \$26.5 million in
11 one or more of the following forms:

- 12 a. A surety bond guaranteeing performance of the Work;
- 13 b. One or more irrevocable letters of credit equaling the total
14 estimated cost of the Work;
- 15 c. A trust fund;
- 16 d. A guarantee to perform the Work by one or more parent
17 corporations or subsidiaries, or by one or more unrelated corporations that have a
18 substantial business relationship with at least one of the Settling Defendants;
- 19 e. A demonstration that one or more of the Settling Defendants
20 satisfy the requirements of 40 C.F.R. Part 264.143(f). For purposes of this
21 Paragraph, references in 40 CFR 264.143 (f) to the "sum of current closure and
22 post-closure costs estimates and the current plugging and abandonment costs
23 estimates" shall mean the amount of financial security specified above; or

- 24 f. An insurance policy in form and substance satisfactory to EPA.

25 46. If the Settling Defendants seek to demonstrate the ability to complete
26 the Work through a guarantee by a third party pursuant to Paragraph 45.d of this
27 Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies
28 the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to

1 demonstrate their ability to complete the Work by means of the financial test or the
2 corporate guarantee pursuant to Paragraph 45.d or 45.e, they shall resubmit sworn
3 statements conveying the information required by 40 C.F.R. Part 264.143(f)
4 annually, on the first Day of April in each year after the Settling Defendants
5 establish such guarantee. In the event that EPA, after a reasonable opportunity for
6 review and comment by the State, determines at any time that the financial
7 assurances provided pursuant to this Section are inadequate, Settling Defendants
8 shall, within 30 Days of receipt of notice of EPA's determination, obtain and
9 present to EPA for approval one of the other forms of financial assurance listed in
10 Paragraph 45 of this Consent Decree. Settling Defendants' inability to
11 demonstrate financial ability to complete the Work shall not excuse performance
12 of any activities required under this Consent Decree.

13 47. If Settling Defendants can show that the estimated cost to complete
14 the remaining Work has diminished below the amount set forth in Paragraph 45
15 above after entry of this Consent Decree, Settling Defendants may, on the first
16 Day of April in each year after the Settling Defendants establish financial security
17 pursuant to Paragraph 45 of this Consent Decree, or at any other time agreed to by
18 the Parties, reduce the amount of the financial security provided under this Section
19 to the estimated cost of the remaining Work to be performed. Settling Defendants
20 shall submit a proposal for such reduction to EPA, in accordance with the
21 requirements of this Section, and may reduce the amount of the security upon
22 approval by EPA. In the event of a dispute under Section XX (Dispute
23 Resolution), Settling Defendants may reduce the amount of the security in
24 accordance with the final administrative or judicial decision resolving the dispute.

25 48. Settling Defendants may change the form of financial assurance
26 provided under this Section at any time, upon notice to and approval by EPA,
27 provided that the new form of assurance meets the requirements of this Section. In
28 the event of a dispute under Section XX (Dispute Resolution), Settling Defendants

1 may change the form of the financial assurance only in accordance with the final
2 administrative or judicial decision resolving the dispute.

3 49. Settling Defendants' obligation to establish and maintain financial
4 security under this Section shall terminate upon EPA's issuance of a Certification
5 of Completion of the Remedial Action pursuant to Paragraph 51.b of this Consent
6 Decree.

7 XIV. CERTIFICATION OF COMPLETION

8 50. "Operational and Functional"

9 a. Within 30 Days after Settling Defendants conclude that the
10 Remedial Action is Operational and Functional, Settling Defendants shall
11 schedule and conduct a pre-certification inspection to be attended by Settling
12 Defendants and EPA. If, after the pre-certification inspection, the Settling
13 Defendants still believe that the Remedial Action is Operational and Functional,
14 they shall submit a written report requesting certification to EPA for approval,
15 with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other
16 Submissions) within 30 Days of the inspection. In the report, a registered
17 professional engineer and the Settling Defendants' Project Coordinator shall state
18 that the Remedial Action is Operational and Functional. The written report shall
19 include as-built drawings signed and stamped by a professional engineer. The
20 report shall contain the following statement, signed by a responsible corporate
21 official of a Settling Defendant or the Settling Defendants' Project Coordinator:

22 To the best of my knowledge, after thorough investigation, I certify
23 that the information contained in or accompanying this submission is
24 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

25 If, after completion of the pre-certification inspection and receipt and review of
26 the written report, EPA, after reasonable opportunity to review and comment by
27 DTSC, determines that the Remedial Action is not Operational and Functional,
28 EPA will notify Settling Defendants in writing of the activities that must be

1 undertaken by Settling Defendants pursuant to this Consent Decree in order for the
2 Remedial Action to be Operational and Functional. EPA will set forth in the
3 notice a schedule for performance of such activities consistent with the Consent
4 Decree and the SOW or require the Settling Defendants to submit a schedule to
5 EPA for approval pursuant to Section XI (EPA Approval of Plans and Other
6 Submissions). Settling Defendants shall perform all activities described in the
7 notice in accordance with the specifications and schedules established pursuant to
8 this Paragraph, subject to their right to invoke the dispute resolution procedures
9 set forth in Section XX (Dispute Resolution).

10 b. If EPA concludes, based on the initial or any subsequent report
11 requesting certification, and after a reasonable opportunity for review and
12 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
13 will so certify in writing to Settling Defendants.

14 c. If EPA fails to certify that the Remedial Action is Operational
15 and Functional within 90 Days after a request, EPA shall be deemed to have
16 denied the request, unless Settling Defendants agree to an extension of time.
17 Settling Defendants may, at any time thereafter, invoke Dispute Resolution
18 pursuant to Section XX (Dispute Resolution).

19 d. Nothing herein shall preclude Settling Defendants from
20 requesting, and EPA from granting, pursuant to the same procedures set forth in
21 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial
22 Action is Operational and Functional; provided, however, that any such
23 certification shall be conditioned on such phase remaining Operational and
24 Functional at the time Settling Defendants request certification for the final phase
25 of the Remedial Action. In the event Settling Defendants request certification that
26 a phase of the Remedial Action is Operational and Functional, and such request is
27 granted, the resulting certification shall not affect the Operational and Functional
28 Date.

1 e. Upon approval of the certification report by EPA or pursuant to
2 a ruling by the Court, the Operational and Functional Date shall be the date when
3 the last report requesting certification of the final phase of the Remedial Action
4 was submitted.

5 f. The Operational and Functional Date established pursuant to
6 this Paragraph shall not be affected if existing contamination greater than or equal
7 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the
8 intermediate zone and this existing contamination prevents Settling Defendants
9 from meeting the Performance Criteria, provided the Settling Defendants are
10 taking the response actions determined by EPA to be necessary to reverse the trend
11 pursuant to the SOW.

12 g. Once EPA has determined that the Remedial Action is
13 Operational and Functional pursuant to this Paragraph, the Operational and
14 Functional Date shall not be affected in the event EPA subsequently determines,
15 pursuant to Paragraph 13, that modification to the Work specified in the SOW or
16 in work plans developed pursuant to the SOW is necessary to achieve and
17 maintain the Performance Criteria, to meet discharge ARARs, or to implement
18 Mid-Valley Monitoring.

19 51. Certification of Completion.

20 a. No later than 90 Days before, and no sooner than 120 Days
21 prior to, the eight-year anniversary of the Operational and Functional Date, and
22 upon Settling Defendants concluding that the Remedial Action is still Operational
23 and Functional, Settling Defendants shall schedule a pre-certification inspection to
24 be attended by Settling Defendants and EPA. The Settling Defendants shall
25 submit a Facility Status Package to EPA which shall include, but not be limited to,
26 all maintenance reports, performance reports, sampling results, and all other
27 deliverables updated as appropriate to reflect the performance and condition of
28 the containment and Mid-Valley Monitoring systems including all wells,

1 pipelines, and treatment facilities. If, after the pre-certification inspection, the
2 Settling Defendants still believe that the Remedial Action is Operational and
3 Functional, Settling Defendants shall submit a written report by a registered
4 professional engineer, in accordance with the SOW, stating that the Remedial
5 Action is Operational and Functional. The report shall contain the following
6 statement, signed by a responsible corporate official of a Settling Defendant or by
7 the Settling Defendants' Project Coordinator:

8 To the best of my knowledge, after thorough investigation, I certify
9 that the information contained in or accompanying this submission is
10 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

11 If, after review of the written report, EPA, after reasonable opportunity to review
12 and comment by DTSC, determines that repairs to the containment or Mid-Valley
13 Monitoring systems are needed, and/or additional documentation regarding access
14 is needed, EPA will notify Settling Defendants in writing of the activities that
15 must be undertaken by Settling Defendants to effect such repairs and/or to provide
16 the necessary documentation. EPA will set forth in the notice a schedule for
17 performance of such activities consistent with the Consent Decree and the SOW or
18 require the Settling Defendants to submit a schedule to EPA for approval pursuant
19 to Section XI (EPA Approval of Plans and Other Submissions). Settling
20 Defendants shall perform all activities described in the notice in accordance with
21 the specifications and schedules established therein, subject to their right to invoke
22 the dispute resolution procedures set forth in Section XX (Dispute Resolution).

23 b. If EPA concludes, based on the initial or any subsequent
24 request for Certification of Completion by Settling Defendants that the Remedial
25 Action is still Operational and Functional, EPA will so notify the Settling
26 Defendants in writing. This notification shall constitute the Certification of
27 Completion of the Remedial Action for purposes of this Consent Decree,
28 including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff).

1 XV. EMERGENCY RESPONSE

2 52. In the event of any action or occurrence caused by or related to the
3 performance of the Work which causes or threatens a release of Waste Material
4 from the Site that constitutes an emergency situation or may present an immediate
5 threat to public health or welfare or the environment, Settling Defendants shall,
6 subject to Paragraph 53, immediately take all appropriate action to prevent, abate,
7 or minimize such release or threat of release, and shall immediately notify the
8 EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's
9 Alternate Project Coordinator. If neither of these persons is available, the Settling
10 Defendants shall notify the EPA Emergency Response Unit, Region 9. Settling
11 Defendants shall take such actions in consultation with EPA's Project Coordinator
12 or other available authorized EPA officer and in accordance with all applicable
13 provisions of the Health and Safety Plans, the Contingency Plans, and any other
14 applicable plans or documents developed pursuant to the SOW. In the event that
15 Settling Defendants fail to take appropriate response action as required by this
16 Section, and EPA takes such action instead, Settling Defendants shall reimburse
17 EPA all costs of the response action not inconsistent with the NCP pursuant to
18 Section XVI (Payments for Response Costs and Civil Penalties).

19 53. Nothing in the preceding Paragraph or in this Consent Decree shall be
20 deemed to limit any authority of the United States (i) to take all appropriate action
21 to protect human health and the environment or to prevent, abate, respond to, or
22 minimize an actual or threatened release of Waste Material on, at, or from the Site,
23 or (ii) to direct or order such action, or seek an order from the Court, to protect
24 human health and the environment or to prevent, abate, respond to, or minimize an
25 actual or threatened release of Waste Material on, at, or from the Site, subject to
26 Section XXII (Covenants Not to Sue by Plaintiff).

1 XVI. PAYMENTS FOR RESPONSE COSTS AND CIVIL PENALTIES

2 54. Payments for Past Response Costs.

3 a. Within 15 Working Days after Settling Defendants receive
4 notice from the United States that this Consent Decree has been lodged, Settling
5 Defendants shall deposit \$800,000 into an escrow account, which Settling
6 Defendants shall establish, bearing interest on commercially reasonable terms, in
7 a federally-chartered bank (the "Escrow Account"). If the Consent Decree is
8 not entered by the Court, and the time for any appeal of that decision has run or
9 if the Court's denial of entry is upheld on appeal, the monies placed in escrow,
10 together with accrued interest thereon, shall be returned to Settling Defendants.
11 If the Consent Decree is entered by the Court, Settling Defendants shall, within
12 30 Days thereof, cause the monies in the Escrow Account to be paid to EPA in
13 accordance with Paragraph 54.b.

14 b. Payment by Settling Defendants from the Escrow Account shall
15 be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of
16 Justice account in accordance with current EFT procedures, referencing USAO
17 File Number 2005V00443, EPA Site/Spill ID Number O98V, DOJ Case Number
18 90-11-2-354/15, and the civil action number of this case. Payment shall be made
19 in accordance with instructions provided to the Settling Defendants by the
20 Financial Litigation Unit of the United States Attorney's Office for the Central
21 District of California following lodging of the Consent Decree. Any payments
22 received by the Department of Justice after 4:00 p.m. (Eastern Time) will be
23 credited on the next Working Day.

24 c. At the time of payment, Settling Defendants shall send notice
25 that payment has been made to the United States, to EPA and to the Regional
26 Accounting Contact, in accordance with Section XXVII (Notices and
27 Submissions).

28 d. The total amount to be paid by Settling Defendants specified

1 pursuant to this Paragraph shall be deposited in the Puente Valley Operable Unit
2 Special Account within the EPA Hazardous Substance Superfund. This Special
3 Account shall be retained and used to conduct or finance response actions at or in
4 connection with the Site, or the San Gabriel Valley Superfund Sites (Areas 1- 4),
5 or may be transferred by EPA to the EPA Hazardous Substance Superfund.

6 55. Payments for Future Response Costs.

7 a. Settling Defendants shall pay to EPA (i) that portion of Future
8 Response Costs that the United States incurs pertaining to the Work, incurred in a
9 manner not inconsistent with the National Contingency Plan, and incurred prior to
10 the date 8 years from the Operational and Functional Date; and (ii) oversight costs
11 incurred by EPA in connection with the SEP.

12 b. On approximately an annual basis the United States will send
13 Settling Defendants a bill requiring payment that includes a certified cost
14 summary, which includes direct and indirect costs incurred by EPA and its
15 contractors, and a DOJ-prepared cost summary which reflects costs incurred by
16 DOJ and its contractors, if any. Settling Defendants shall make all payments
17 within 45 Days of Settling Defendants' receipt of each bill requiring payment,
18 except as otherwise provided in the following Paragraph. Settling Defendants
19 shall make all payments required by this Paragraph by FedWire EFT, pursuant to
20 the instructions set forth in Paragraph 54.b, or by a certified check or cashier's
21 check made payable to "EPA Hazardous Substance Superfund," referencing the
22 name and address of the party making the payment, EPA Site/Spill ID Number
23 098V, DOJ Number 90-11-2-354/15, and the civil action number of this case.

24 Settling Defendants shall send the check(s) to:

25 EPA – Cincinnati Accounting Operations
26 Attn: Region 9 Superfund Receivables
27 P.O. Box 371099M
28 Pittsburgh, PA 15251

28 c. At the time of payment, Settling Defendants shall send notice

1 that payment has been made to the United States, to EPA and to the Regional
2 Accounting Contact, in accordance with Section XXVII (Notices and
3 Submissions).

4 d. Settling Defendants' payments pursuant to this Paragraph shall
5 be deposited in the Puente Valley Operable Unit Special Account. This Special
6 Account shall to be retained and used to conduct or finance response actions at or
7 in connection with the Site, or the San Gabriel Valley Superfund Sites (Areas 1-
8 4), or may be transferred by EPA from this Special Account to the EPA Hazardous
9 Substance Superfund.

10 56. Settling Defendants may request reasonable supporting
11 documentation for any oversight costs within 15 Days of receipt of a bill. Settling
12 Defendants may contest payment of any Future Response Costs under
13 Paragraph 55 if they determine that the United States has made an accounting error
14 or if they allege that a cost item that is included represents costs that are
15 inconsistent with the NCP or are outside the scope of Paragraph 55. Such
16 objection shall be made in writing within 30 Days of receipt of the contested bill,
17 or, if supporting documentation is requested, within 15 Days of receipt of the
18 supporting documentation, and must be sent to the United States pursuant to
19 Section XXVII (Notices and Submissions). Any such objection shall specifically
20 identify the contested Future Response Costs and the basis for objection. In the
21 event of an objection, Settling Defendants shall, simultaneously with submitting
22 the objection, pay all uncontested Future Response Costs in the manner described
23 in Paragraph 55. Simultaneously, Settling Defendants shall establish an interest-
24 bearing escrow account in a federally-insured bank duly chartered in the State of
25 California and remit to that escrow account funds equivalent to the amount of the
26 contested Future Response Costs. Settling Defendants shall send to the United
27 States, as provided in Section XXVII (Notices and Submissions), a copy of the
28 transmittal letter and the check remitting the uncontested Future Response Costs,

1 together with a copy of the correspondence that establishes and funds the escrow
2 account, which shall include information containing the identity of the bank and
3 bank account under which the escrow account is established, as well as a bank
4 statement showing the initial balance of the escrow account. Simultaneously with
5 establishment of the escrow account, Settling Defendants shall initiate the dispute
6 resolution procedures in Section XX (Dispute Resolution). If the United States
7 prevails in the dispute, within 5 Days of the resolution of the dispute, Settling
8 Defendants shall pay the sums due (with accrued interest) to the United States in
9 the manner described in Paragraph 55. If Settling Defendants prevail concerning
10 any aspect of the contested costs, Settling Defendants shall pay all contested costs
11 (plus associated accrued Interest) as to which they did not prevail to the United
12 States in the manner described in Paragraph 55; Settling Defendants shall be
13 disbursed any balance of the escrow account. The dispute resolution procedures
14 set forth in this Paragraph in conjunction with the procedures set forth in Section
15 XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes
16 regarding the Settling Defendants' obligation to reimburse the United States for its
17 Future Response Costs.

18 57. Payment of Civil Penalty. Within 30 Days after the Effective Date of
19 this Consent Decree, Settling Defendants shall pay the United States the sum of
20 \$125,000 in settlement of claims for a civil penalty and punitive damages.
21 Payment shall be made by FedWire EFT to the U.S. Department of Justice in
22 accordance with instructions to be provided to Settling Defendants by the
23 Financial Litigation Unit of the U.S. Attorney's Office for the Central District of
24 California following lodging of this Consent Decree. At the time of payment,
25 Settling Defendants shall simultaneously send written notice of payment and a
26 copy of any transmittal documentation (which should reference DOJ case number
27 90-11-2-354/15 and the civil action number of this case to the United States in
28 accordance with Section XXVII of this Settlement Agreement (Notices and

1 Submissions).

2 58. In the event that the payments required by Paragraphs 54 and 57 are
3 not made within 30 Days of the Effective Date or the payments required by
4 Paragraph 55 are not made within 30 Days of the Settling Defendants' receipt of
5 the bill requiring payment, Settling Defendants shall pay Interest on the unpaid
6 balance. Interest to be paid on Past Response Costs and civil penalties under this
7 Paragraph shall begin to accrue on the Effective Date. Interest on Future
8 Response Costs shall begin to accrue on the date of the bill for those costs.
9 Interest shall accrue through the date of the Settling Defendants' payment.
10 Payments of Interest made under this Paragraph shall be in addition to such other
11 remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure
12 to make timely payments under this Section, including but not limited to payment
13 of Stipulated Penalties pursuant to Paragraph 83. The Settling Defendants shall
14 make all payments required by this Paragraph in the manner described in
15 Paragraph 55.

16 XVII. INDEMNIFICATION AND INSURANCE

17 59. Settling Defendants' Indemnification of the United States.

18 a. The United States does not assume any liability by entering
19 into this agreement or by virtue of any designation of Settling Defendants as
20 EPA's authorized representatives under Section 104(e) of CERCLA. Settling
21 Defendants shall indemnify, save and hold harmless the United States and its
22 officials, agents, employees, contractors, subcontractors, or representatives for or
23 from any and all claims or causes of action arising from, or on account of,
24 negligent or other wrongful acts or omissions of Settling Defendants, their
25 officers, directors, employees, agents, contractors, subcontractors, and any persons
26 acting on their behalf or under their control, in carrying out activities pursuant to
27 this Consent Decree, including, but not limited to, any claims arising from any
28 designation of Settling Defendants as EPA's authorized representatives under

1 Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the
2 United States all costs it incurs including, but not limited to, attorneys fees and
3 other expenses of litigation and settlement arising from, or on account of, claims
4 made against the United States based on negligent or other wrongful acts or
5 omissions of Settling Defendants, their officers, directors, employees, agents,
6 contractors, subcontractors, and any persons acting on their behalf or under their
7 control, in carrying out activities pursuant to this Consent Decree. The United
8 States shall not be held out as a party to any contract entered into by or on behalf
9 of Settling Defendants in carrying out activities pursuant to this Consent Decree.
10 Neither the Settling Defendants nor any such contractor shall be considered an
11 agent of the United States.

12 b. The United States shall give Settling Defendants notice of any
13 claim for which the United States plans to seek indemnification pursuant to
14 Paragraph 59, and shall consult with Settling Defendants prior to settling such
15 claim.

16 60. Settling Defendants waive all claims against the United States for
17 damages or reimbursement or for set-off of any payments made or to be made to
18 the United States arising from or on account of any contract, agreement, or
19 arrangement between any one or more of Settling Defendants and any person for
20 performance of Work on or relating to the Site, including, but not limited to,
21 claims on account of construction delays. In addition, Settling Defendants shall
22 indemnify and hold harmless the United States with respect to any and all claims
23 for damages or reimbursement arising from or on account of any contract,
24 agreement, or arrangement between any one or more of Settling Defendants and
25 any person for performance of Work on or relating to the Site, including, but not
26 limited to, claims on account of construction delays.

27 61. No later than 15 Days before commencing any on-site Work, Settling
28 Defendants shall secure, and shall maintain comprehensive general liability

1 insurance with limits of \$5 million, combined single limit, and automobile liability
2 insurance with limits of \$2 million, combined single limit, naming the United
3 States as an additional insured. In addition, for the duration of this Consent
4 Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or
5 subcontractors satisfy, all applicable laws and regulations regarding the provision
6 of worker's compensation insurance for all persons performing the Work on behalf
7 of Settling Defendants in furtherance of this Consent Decree. Prior to
8 commencement of the Work under this Consent Decree, Settling Defendants shall
9 provide to EPA certificates of such insurance and a copy of each insurance policy.
10 Settling Defendants shall resubmit such certificates and copies of policies each
11 year on the anniversary of the Effective Date. If Settling Defendants demonstrate
12 by evidence satisfactory to EPA that any contractor or subcontractor maintains
13 insurance equivalent to that described above, or insurance covering the same risks
14 but in a lesser amount, then, with respect to that contractor or subcontractor,
15 Settling Defendants need provide only that portion of the insurance described
16 above which is not maintained by the contractor or subcontractor.

17 XVIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

18 62. Settling Defendants shall implement (i) the Woodland Duck Farm
19 Supplemental Environmental Project in accordance with all provisions of
20 Appendix E to this Consent Decree, which is attached hereto and incorporated into
21 this Consent Decree by reference; or (ii) an alternative Supplemental
22 Environmental Project as approved by EPA pursuant to paragraph 63. In
23 implementing the SEP, Settling Defendants shall spend not less than \$468,750 in
24 Eligible SEP Costs, as that term is defined in Section IV (Definitions) of this
25 Consent Decree. The SEP shall be completed within five years after entry of this
26 Consent Decree. The Woodland Duck Farm Supplemental Environmental Project
27 involves the redevelopment of the Woodland Duck Farm property (the "Duck
28 Farm"). The Duck Farm is a 57-acre property located along the east side of the

1 San Gabriel River just north of the confluence of the San Gabriel River and San
2 Jose Creek. The property consists of two portions: 45-acres along the west bank of
3 the San Gabriel River and 12-acres on the eastern side of the I-605 freeway. The
4 property was purchased by The Trust for Public Land ("TPL") in 2001. TPL sold
5 the property to the Watershed Conservation Authority ("WCA") in 2004. WCA
6 plans to redevelop the Duck Farm into a multi-use property for the benefit of the
7 local community. The SEP funds may be used for the following aspects of the
8 Duck Farm redevelopment:

- 9 a. phytoremediation;
- 10 b. the construction of groundwater recharge facilities;
- 11 c. wetlands habitat restoration, and
- 12 d. treatment wetlands,

13 provided, however, that the SEP funds may be spent on c. and d., above, only in
14 the event that SEP funds cannot be fully spent on projects a. and/or b.

15 63. a. Settling Defendants are responsible for the satisfactory
16 completion of the SEP in accordance with the requirements of this Consent
17 Decree. "Satisfactory completion" means that Settling Defendants shall complete
18 the work in accordance with all work plans and specifications for the project and
19 shall spend not less than \$468,750 in Eligible SEP Costs. Settling Defendants
20 may use contractors or consultants in planning and implementing the SEP.

21 b. If the Woodland Duck Farm Supplemental Environmental
22 Project is not initiated within 3 years of entry of this Consent Decree because the
23 WCA has not initiated the larger project, or if a force majeure event otherwise
24 prevents initiation or performance of the Woodland Duck Farm Supplemental
25 Environmental Project, then Settling Defendants shall propose an alternative SEP
26 that meets the criteria of EPA's May 1, 1998 Supplemental Environmental
27 Projects Policy, as modified or amended by any subsequent policy. EPA may, in
28 its unreviewable discretion, agree to extend the requirement to initiate the

1 Woodland Duck Farm Supplemental Environmental Project beyond the 3 year
2 limit. If the Parties agree on an alternative SEP, then Settling Defendants shall
3 submit to EPA for approval an alternative SEP Implementation Plan that contains
4 milestones for the initiation and completion of the alternative SEP.

5 c. If EPA, in its unreviewable discretion, does not approve an alternative
6 SEP within six months of the date Settling Defendants provide notice to EPA of
7 their desire to perform an alternative SEP, then Settling Defendants agree to pay
8 applicable Stipulated Penalties pursuant to Paragraph 85.

9 64. With regard to the Woodland Duck Farm Supplemental
10 Environmental Project, Settling Defendants certify the truth and accuracy of each
11 of the following:

12 a. that all cost information provided to EPA in connection with
13 EPA's approval of the Woodland Duck Farm Supplemental Environmental Project
14 is complete and accurate and represents a fair estimate of the costs necessary to
15 implement the Woodland Duck Farm Supplemental Environmental Project;

16 b. that, as of the date of executing this Consent Decree, Settling
17 Defendants are not required to perform or develop the Woodland Duck Farm
18 Supplemental Environmental Project by any federal, state, or local law or
19 regulation and are not required to perform or develop the Woodland Duck Farm
20 Supplemental Environmental Project by agreement, grant, or as injunctive relief
21 awarded in any other action in any forum;

22 c. that the Woodland Duck Farm Supplemental Environmental
23 Project is not a project that Settling Defendants were planning or intending to
24 construct, perform, or implement other than in settlement of the claims resolved in
25 this Consent Decree;

26 d. that Settling Defendants have not received, and are not
27 negotiating to receive, credit for the Woodland Duck Farm Supplemental
28 Environmental Project in any other enforcement action; and

1 e. that Settling Defendants will not receive any reimbursement for
2 any portion of the Woodland Duck Farm Supplemental Environmental Project
3 from any other person.

4 65. SEP Completion Report. Within 60 Days after the date set for
5 completion of the SEP, Settling Defendants shall submit a SEP Completion Report
6 to the United States and the State, in accordance with Section XXVII of this
7 Consent Decree (Notices and Submissions). The SEP Completion Report shall
8 contain the following information:

- 9 a. a detailed description of the SEP as implemented;
- 10 b. a description of any problems encountered in completing the
11 SEP and the solutions thereto;
- 12 c. an itemized list of all Eligible SEP Costs;
- 13 d. certification that the SEP has been fully implemented pursuant
14 to the provisions of this Consent Decree;
- 15 e. a description of the environmental and public health benefits
16 resulting from implementation of the SEP (with a quantification of the benefits
17 and pollutant reductions, if feasible);
- 18 f. The SEP Completion Report shall be signed by a responsible
19 corporate official of a Settling Defendant or by the Settling Defendants' Project
20 Coordinator and shall bear the certification language set forth in Paragraph 51.a.

21 66. EPA may require reasonable information in addition to that described
22 above, in order to determine the adequacy of SEP completion or eligibility of SEP
23 costs, and Settling Defendants shall provide such information.

24 67. After receiving the SEP Completion Report, the United States shall
25 notify Settling Defendants whether or not Settling Defendants have satisfactorily
26 completed the SEP. If the SEP has not been satisfactorily completed in
27 accordance with all applicable work plans and schedules, or if the amount of
28 Eligible SEP Costs incurred is less than the amount set forth in Paragraph 62,

1 above, Stipulated Penalties may be assessed under Section XXI (Stipulated
2 Penalties) of this Consent Decree.

3 68. Disputes concerning the satisfactory performance of the SEP and the
4 amount of Eligible SEP Costs incurred may be resolved under Section XX of this
5 Consent Decree (Dispute Resolution). No other disputes arising under this
6 Section shall be subject to Dispute Resolution.

7 69. Each submission required under this Section shall be signed by a
8 corporate representative of the Settling Defendants with knowledge of the SEP or
9 by Settling Defendants' Project Coordinator.

10 70. Any public statement, oral or written, in print, film, or other media,
11 made by Settling Defendants making reference to the SEP under this Consent
12 Decree shall include the following language: "This project was undertaken in
13 connection with the settlement of an enforcement action, United States v. Carrier
14 Corp., taken on behalf of the U.S. Environmental Protection Agency under the
15 Comprehensive Environmental Response, Compensation, and Liability Act
16 (CERCLA or Superfund)."

17 71. Settling Defendants agree not to claim any funds expended in the
18 performance of the SEP as a deductible business expense for purposes of
19 calculating their federal and state income taxes. In addition, Settling Defendants,
20 within 30 Days of the date they submit their federal and state income taxes for the
21 calendar year in which the SEP is completed, shall submit to EPA a certification
22 that they did not deduct any of the funds expended in the SEP in calculating their
23 federal and state income taxes.

24 XIX. FORCE MAJEURE

25 72. "Force majeure," for purposes of this Consent Decree, is defined as
26 any event arising from causes beyond the control of Settling Defendants, of any
27 entity controlled by Settling Defendants, or of Settling Defendants' contractors,
28 that delays or prevents the performance of any obligation under this Consent

1 Decree despite Settling Defendants' best efforts to fulfill the obligation. The
2 requirement that Settling Defendants exercise "best efforts to fulfill the
3 obligation" includes using best efforts to anticipate any potential force majeure
4 event and best efforts to address the effects of any potential force majeure event
5 (1) as it is occurring and (2) following the potential force majeure event, such that
6 the delay is minimized to the greatest extent possible. "Force Majeure" does not
7 include financial inability to complete the Work or a failure to attain the
8 Performance Criteria.

9 73. If any event occurs or has occurred that may delay the performance of
10 any obligation under this Consent Decree, whether or not caused by a force
11 majeure event, Settling Defendants shall notify orally EPA's Project Coordinator
12 or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both
13 of EPA's designated representatives are unavailable, the Director of the Superfund
14 Division, EPA Region 9, within 48 hours of when Settling Defendants first knew
15 that the event might cause a delay. Within 14 Days thereafter, Settling Defendants
16 shall provide in writing to EPA an explanation and description of the reasons for
17 the delay; the anticipated duration of the delay; all actions taken or to be taken to
18 prevent or minimize the delay; a schedule for implementation of any measures to
19 be taken to prevent or mitigate the delay or the effect of the delay; Settling
20 Defendants' rationale for attributing such delay to a force majeure event if they
21 intend to assert such a claim; and a statement as to whether, in the opinion of
22 Settling Defendants, such event may cause or contribute to an endangerment to
23 public health, welfare or the environment. Settling Defendants shall include with
24 any notice all available documentation supporting their claim that the delay was
25 attributable to a force majeure. Failure to comply with the above requirements
26 shall preclude Settling Defendants from asserting any claim of force majeure for
27 that event for the period of time of such failure to comply, and for any additional
28 delay caused by such failure. Settling Defendants shall be deemed to know of any

1 circumstance of which Settling Defendants, any entity controlled by Settling
2 Defendants, or Settling Defendants' contractors knew or should have known.

3 74. If EPA, after a reasonable opportunity for review and comment by the
4 State, agrees that the delay or anticipated delay is attributable to a force majeure
5 event, the time for performance of the obligations under this Consent Decree that
6 are affected by the force majeure event will be extended by EPA, after a
7 reasonable opportunity for review and comment by the State, for such time as is
8 necessary to complete those obligations. An extension of the time for performance
9 of the obligations affected by the force majeure event shall not, of itself, extend
10 the time for performance of any other obligation. If EPA, after a reasonable
11 opportunity for review and comment by the State, does not agree that the delay or
12 anticipated delay has been or will be caused by a force majeure event, EPA will
13 notify Settling Defendants in writing of its decision. If EPA, after a reasonable
14 opportunity for review and comment by the State, agrees that the delay is
15 attributable to a force majeure event, EPA will notify Settling Defendants in
16 writing of the length of the extension, if any, for performance of the obligations
17 affected by the force majeure event.

18 75. If Settling Defendants elect to invoke the dispute resolution
19 procedures set forth in Section XX (Dispute Resolution), they shall do so no later
20 than 15 Days after receipt of EPA's notice. In any such proceeding, Settling
21 Defendants shall have the burden of demonstrating by a preponderance of the
22 evidence that the delay or anticipated delay has been or will be caused by a force
23 majeure event, that the duration of the delay or the extension sought was or will be
24 warranted under the circumstances, that best efforts were exercised to avoid and
25 mitigate the effects of the delay, and that Settling Defendants complied with the
26 requirements of Paragraphs 72 and 73, above. If Settling Defendants carry this
27 burden, the delay at issue shall be deemed not to be a violation by Settling
28 Defendants of the affected obligation of this Consent Decree identified to EPA

1 and the Court.

2 XX. DISPUTE RESOLUTION

3 76. Unless otherwise expressly provided for in this Consent Decree, the
4 dispute resolution procedures of this Section shall be the exclusive mechanism to
5 resolve disputes arising under or with respect to this Consent Decree. However,
6 the procedures set forth in this Section shall not apply to actions by the United
7 States to enforce obligations of Settling Defendants that have not been disputed in
8 accordance with this Section.

9 77. Any dispute that arises under or with respect to this Consent Decree
10 shall in the first instance be the subject of informal negotiations between the
11 Parties to the dispute. The period for informal negotiations shall not exceed 20
12 Days from the time the dispute arises, unless it is modified by written agreement
13 of the Parties to the dispute. The dispute shall be considered to have arisen when
14 one Party sends the other Parties a written Notice of Dispute.

15 78. Statements of Position.

16 a. In the event that the Parties cannot resolve a dispute by
17 informal negotiations under the preceding Paragraph, then the position advanced
18 by EPA shall be considered binding unless, within 21 Days after the conclusion of
19 the informal negotiation period, Settling Defendants invoke the formal dispute
20 resolution procedures of this Section by serving on the United States a written
21 Statement of Position on the matter in dispute, including but not limited to any
22 factual data, analysis, or opinion supporting that position and any supporting
23 documentation relied upon by Settling Defendants. The Statement of Position
24 shall specify Settling Defendants' position as to whether formal dispute resolution
25 should proceed under Paragraph 79 or Paragraph 80.

26 b. Within 21 Days after receipt of Settling Defendants' Statement
27 of Position, EPA will serve on Settling Defendants its Statement of Position,
28 including, but not limited to, any factual data, analysis, or opinion supporting that

1 position and all supporting documentation relied upon by EPA. EPA's Statement
2 of Position shall include a statement as to whether formal dispute resolution
3 should proceed under Paragraph 79 or 80. Within 10 Days after receipt of EPA's
4 Statement of Position, Settling Defendants may submit a Reply.

5 c. If there is disagreement between EPA and the Settling
6 Defendants as to whether dispute resolution should proceed under Paragraph 79 or
7 80, the Parties to the dispute shall follow the procedures set forth in the Paragraph
8 determined by EPA to be applicable. However, if the Settling Defendants
9 ultimately appeal to the Court to resolve the dispute, the Court shall determine
10 which Paragraph is applicable in accordance with the standards of applicability set
11 forth in Paragraphs 79 and 80.

12 79. Formal dispute resolution for disputes pertaining to the selection or
13 adequacy of any response action and all other disputes that are accorded review on
14 the administrative record under applicable principles of administrative law shall be
15 conducted pursuant to the procedures set forth in this Paragraph. For purposes of
16 this Paragraph, the adequacy of any response action includes, without limitation:
17 (1) the adequacy or appropriateness of plans, procedures to implement plans, or
18 any other items requiring approval by EPA under this Consent Decree; and (2) the
19 adequacy of the performance of response actions taken pursuant to this Consent
20 Decree. Nothing in this Consent Decree shall be construed to allow any dispute
21 by Settling Defendants regarding the validity of the Interim ROD's or the ESD's
22 provisions.

23 a. An administrative record of the dispute shall be maintained by
24 EPA and shall contain all statements of position, including supporting
25 documentation, submitted pursuant to this Section. Where appropriate, EPA may
26 allow submission of supplemental statements of position by the parties to the
27 dispute.

28 b. The Director of the Superfund Division, EPA Region 9, will

1 issue a final administrative decision resolving the dispute based on the
2 administrative record described in Paragraph 79.a. This decision shall be binding
3 upon the Settling Defendants, subject only to the right to seek judicial review
4 pursuant to Paragraph 79.c and d.

5 c. Any administrative decision made by EPA pursuant to
6 Paragraph 79.b. shall be reviewable by this Court, provided that a motion for
7 judicial review of the decision is filed by Settling Defendants with the Court and
8 served on all Parties within 10 Days of receipt of EPA's decision. The motion
9 shall include a description of the matter in dispute, the efforts made by the Parties
10 to resolve it, the relief requested, and the schedule, if any, within which the
11 dispute must be resolved to ensure orderly implementation of this Consent Decree.
12 The United States may file a response to Settling Defendants' motion.

13 d. In proceedings on any dispute governed by this Paragraph,
14 Settling Defendants shall have the burden of demonstrating that the decision of the
15 Superfund Division Director is arbitrary and capricious or otherwise not in
16 accordance with law. Judicial review of EPA's decision shall be on the
17 administrative record compiled pursuant to Paragraph 79.a.

18 80. Formal dispute resolution for disputes that neither pertain to the
19 selection or adequacy of any response action nor are otherwise accorded review on
20 the administrative record under applicable principles of administrative law, shall
21 be governed by this Paragraph.

22 a. Following receipt of Settling Defendants' Statement of Position
23 submitted pursuant to Paragraph 78, the Director of the Superfund Division, EPA
24 Region 9, will issue a final decision resolving the dispute. The Superfund
25 Division Director's decision shall be binding on Settling Defendants unless, within
26 10 Days of receipt of the decision, Settling Defendants file with the Court and
27 serve on the Parties a motion for judicial review of the decision, setting forth the
28 matter in dispute, the efforts made by the Parties to resolve it, the relief requested,

and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph K of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

81. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 91. Notwithstanding the stay of payment, Stipulated Penalties shall accrue from the first Day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

82. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 83, 84, and 85 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

1 83. Stipulated Penalty Amounts - Work.

2 a. The following Stipulated Penalties shall accrue per violation
3 per Day for any noncompliance identified in Subparagraph 83.b:

4 Penalty Per Violation Per Day Period of Noncompliance

5 \$1,000	1st through 14th Day
6 \$2,000	15th through 30th Day
7 \$3,000	31st Day and beyond

8 b. Compliance Milestones. Failure to perform any of the
9 following within the specified time schedule provided for in this Consent Decree,
10 SOW, or work plans shall result in stipulated penalties in the amounts set forth in
11 Subparagraph a.:

- 12 1. Initiation of construction of Remedial Action;
- 13 2. Completion of construction of Remedial Action;
- 14 3. Achievement of Operational and Functional Status;
- 15 4. Compliance with actions required pursuant to the SOW
16 to come back into compliance with the Performance
17 Criteria or discharge ARARs;
- 18 5. Compliance with actions required by EPA pursuant to
19 the SOW where EPA has determined it is more likely
20 than not that the Performance Criteria or discharge
21 ARARs will be exceeded if such actions are not
22 undertaken;
- 23 6. Timely payments for Future Response Costs;
- 24 7. Timely payments for Past Response Costs; and,
- 25 8. Timely payments for civil penalties.

26 84. Stipulated Penalty Amounts - Reports.

27 a. The following Stipulated Penalties shall accrue per violation
28

per Day for any non-compliance identified in Subparagraph 84.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

b. Failure to submit the following reports in a timely or adequate manner as set forth in Section XI (EPA Approval of Plans and Other Submissions) shall result in stipulated penalties in the amounts set forth in Subparagraph a.:

1. Draft and Final RD/RA Work Plans;
2. Preliminary Remedial Design;
3. Pre-final Remedial Design;
4. Final Remedial Design;
5. Remedial Action Construction Complete Report; and
6. Performance Evaluation Reports

c. The following stipulated penalties shall accrue per violation per Day for failure to submit any other reports or written documents in a timely or adequate manner as set forth in Section XI (EPA Approval of Plans and Other Submissions).

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

85. SEP Compliance

a. If Settling Defendants spend less than the amount set forth in Paragraph 62, above, Settling Defendants shall pay a stipulated penalty equal to the difference between the amount of total Eligible SEP Costs incurred by Settling Defendants and the amount set forth in Paragraph 62.

b. If Settling Defendants have completed the SEP, but the SEP is

1 not satisfactory, Settling Defendants shall pay \$48,000 in addition to any penalty
2 required under Subparagraph a, above.

3 c. Except as provided in Subsection d, below, if the SEP is not
4 completed, Settling Defendants shall pay a stipulated penalty of \$75,000 in
5 addition to any penalty required under Subparagraph a, above, and any penalties
6 owing under Subparagraph e, below, for milestones missed up to the time that the
7 penalty under this Subparagraph accrues. The penalty under this Subparagraph
8 shall accrue as of the date specified for completing the SEP or the date
9 performance ceases, whichever is earlier. Upon payment of the penalty under this
10 Subparagraph, penalties under Subparagraph e will no longer continue to accrue.

11 d. If the SEP is not completed but Settling Defendants: (i) made
12 good faith efforts to complete the SEP in accordance with all work plans and
13 specifications for the SEP; and (ii) certify, with supporting documentation, that
14 they spent at least 90 percent of the amount set forth in Paragraph 62, above,
15 Settling Defendants shall only be liable for stipulated penalties as set forth in
16 Subsection a, above, and any penalties owing under Subparagraph e, below, for
17 milestones missed up to the time that the penalty under this Subparagraph accrues.
18 The penalty under this Subparagraph shall accrue as of the date specified for
19 completing the SEP or the date performance ceases, whichever is earlier.

20 e. If Settling Defendants fail to comply with the schedule in
21 Section XVIII (Supplemental Environmental Projects) of this Consent Decree or
22 in the SEP Implementation Plan, Settling Defendants shall pay Stipulated
23 Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

28 Subject to Paragraph 85.c and d, above, such penalties shall accrue from the date

1 Settling Defendants was required to meet each such milestone, until compliance
2 with the milestone is achieved.

3 86. In the event that EPA assumes performance of a portion or all of the
4 Work pursuant to Paragraph 99 of Section XXII (Covenants Not to Sue by
5 Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount
6 of \$2 million.

7 87. All penalties shall begin to accrue on the Day after the complete
8 performance is due or the Day a violation occurs, and shall continue to accrue
9 through the final Day of the correction of the noncompliance or completion of the
10 activity. However, Stipulated Penalties shall not accrue: (1) with respect to a
11 deficient submission under Section XI (EPA Approval of Plans and Other
12 Submissions), during the period, if any, beginning on the 31st Day after EPA's
13 receipt of such submission until the date that EPA notifies Settling Defendants of
14 any deficiency; (2) with respect to a decision by the Director of the Superfund
15 Division, EPA Region 9, under Paragraph 79.b or 80.a of Section XX (Dispute
16 Resolution), during the period, if any, beginning on the 21st Day after the date that
17 Settling Defendants' reply to EPA's Statement of Position is received until the date
18 that the Director issues a final decision regarding such dispute; or (3) with respect
19 to judicial review by this Court of any dispute under Section XX (Dispute
20 Resolution), during the period, if any, beginning on the 31st Day after the Court's
21 receipt of the final submission regarding the dispute until the date that the Court
22 issues a final decision regarding such dispute, whichever occurs later. Nothing
23 herein shall prevent the simultaneous accrual of separate penalties for separate
24 violations of this Consent Decree.

25 88. Following a determination by EPA that Settling Defendants have
26 failed to comply with a requirement of this Consent Decree, EPA may give
27 Settling Defendants written notification of the same and describe the
28 noncompliance. EPA may send the Settling Defendants a written demand for the

1 payment of the penalties. However, penalties shall accrue as provided in the
2 preceding Paragraph regardless of whether EPA has notified Settling Defendants
3 of a violation.

4 89. All penalties accruing under this Section shall be due and payable
5 within 30 Days of Settling Defendants' receipt from EPA of a written demand for
6 payment of the penalties, unless Settling Defendants invoke the dispute resolution
7 procedures under Section XX (Dispute Resolution). All payments to the United
8 States under this Section shall be paid by FedWire EFT pursuant to the
9 instructions set forth in Paragraph 54.b, or by certified check(s) or cashier's
10 check(s) made payable to "EPA Hazardous Substances Superfund." Checks shall
11 be mailed to:

12 EPA – Cincinnati Accounting Operations
13 Attn: Region 9 Superfund Receivables
14 P.O. Box 371099M
Pittsburgh, PA 15251

15 and shall indicate that the payment is for stipulated penalties, and shall reference
16 the EPA Region and Site/Spill ID # 098V, the DOJ Case Number 90-11-2-354/15,
17 the civil action number of this case, and the name and address of the Party making
18 payment. Copies of check(s) paid pursuant to this Section, and any accompanying
19 transmittal letter(s), shall be sent to the United States as provided in Section
20 XXVII (Notices and Submissions).

21 90. The payment of penalties shall not alter in any way Settling
22 Defendants' obligation to complete the performance of the Work required under
23 this Consent Decree.

24 91. Stipulated Penalties shall continue to accrue as provided in
25 Paragraph 87 during any dispute resolution period, but need not be paid until the
26 following:

27 a. If the dispute is resolved by agreement or by a decision of EPA
28 that is not appealed to this Court, accrued penalties determined to be owing shall

1 be paid within 15 Days of the agreement or the receipt of EPA's decision or order;

2 b. If the dispute is appealed to this Court and the United States
3 prevails in whole or in part, Settling Defendants shall pay all accrued penalties
4 determined by the Court to be owed to EPA within 60 Days of receipt of the
5 Court's decision or order, except as provided in Subparagraph c below;

6 c. If the District Court's decision is appealed by any Party,
7 Settling Defendants shall pay all accrued penalties determined by the District
8 Court to be owing to the United States into an interest-bearing escrow account
9 within 60 Days of receipt of the Court's decision or order. Penalties shall be paid
10 into this account as they continue to accrue, at least every 60 Days. Within 15
11 Days of receipt of the final appellate court decision, the escrow agent shall pay the
12 balance of the account to EPA or to Settling Defendants in accordance with the
13 Court's mandate.

14 92. If Settling Defendants fail to pay Stipulated Penalties when due, the
15 United States may institute proceedings to collect the penalties, as well as Interest.
16 Settling Defendants shall pay Interest on the unpaid balance, which shall begin to
17 accrue on the date of demand made pursuant to Paragraph 89.

18 93. Nothing in this Consent Decree shall be construed as prohibiting,
19 altering, or in any way limiting the ability of the United States to seek any other
20 remedies or sanctions available by virtue of Settling Defendants' violation of this
21 Decree or of the statutes and regulations upon which it is based, including but not
22 limited to penalties pursuant to Section 122(l) of CERCLA; provided, however,
23 that the United States shall not seek civil penalties pursuant to Section 122(l) of
24 CERCLA for any violation for which a stipulated penalty is provided herein,
25 except in the case of a willful violation of the Consent Decree.

26 94. Notwithstanding any other provision of this Section, the United States
27 may, in its unreviewable discretion, waive any portion of Stipulated Penalties that
28 have accrued pursuant to this Consent Decree.

1 XXII. COVENANTS NOT TO SUE BY PLAINTIFF

2 95. In consideration of the actions that will be performed and the
3 payments that will be made by Settling Defendants under the terms of this Consent
4 Decree, and except as specifically provided in Paragraphs 96, and 98 of this
5 Section, the United States covenants not to sue or to take administrative action
6 against Settling Defendants:

7 a. pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§
8 9606, 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, for claims relating
9 to the Interim ROD for the Site, as modified by the ESD, and for recovery of Past
10 Response Costs and Future Response Costs;

11 b. pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b),
12 to obtain penalties for failure to comply with the terms of UAO Docket No. 2001-
13 20; and

14 c. pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §
15 9607(c)(3), to obtain punitive damages for failure to comply with the terms of
16 UAO Docket No. 2001-20.

17 Except with respect to future liability, these covenants not to sue shall take effect
18 upon the receipt by EPA of the payments required by Paragraph 54.a of Section
19 XVI (Payments for Response Costs and Civil Penalties). With respect to future
20 liability, these covenants not to sue shall take effect upon Certification of
21 Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section
22 XIV (Certification of Completion). These covenants not to sue are conditioned
23 upon the satisfactory performance by Settling Defendants of their obligations
24 under this Consent Decree. These covenants not to sue extend only to the Settling
25 Defendants and do not extend to any other person.

26 96. United States' Pre-certification Reservations. Notwithstanding any
27 other provision of this Consent Decree, the United States reserves, and this
28 Consent Decree is without prejudice to, the right to institute proceedings in this

1 action or in a new action, or to issue an administrative order seeking to compel

2 Settling Defendants

3 a. to perform further response actions relating to the shallow zone
4 remedy north of Puente Creek at the Site or Mid-Valley
5 Monitoring; or

6 b. to reimburse the United States for additional costs of response
7 for the shallow zone remedy north of Puente Creek at the Site

8 or Mid-Valley Monitoring,

9 if, prior to Certification of Completion of the Remedial Action:

10 a. conditions at the Site, previously unknown to EPA, are
11 discovered, or

12 b. information, previously unknown to EPA, is received, in whole
13 or in part,

14 and EPA determines that these previously unknown conditions or information,
15 together with any other relevant information, indicates that the Remedial Action is
16 not protective of human health or the environment.

17 97. For purposes of Paragraph 96, the information and the conditions
18 known to EPA shall include only that information known to EPA as of the date
19 this Consent Decree is lodged with the Court, and those conditions which are set
20 forth in the Interim ROD, as modified by the ESD, and the administrative record
21 supporting the Interim ROD and the ESD .

22 98. General reservations of rights. The United States reserves, and this
23 Consent Decree is without prejudice to, all rights against Settling Defendants with
24 respect to all matters not expressly included within Plaintiff's covenant not to sue.
25 Notwithstanding any other provision of this Consent Decree, the United States
26 reserves all rights against Settling Defendants with respect to:

27 a. claims based on a failure by Settling Defendants to meet a
28 requirement of this Consent Decree;

1 b. liability arising from the past, present, or future disposal,
2 release, or threat of release of Waste Material outside of the Site;

3 c. liability based upon Settling Defendants' transportation,
4 treatment, storage, or disposal, or the arrangement for the transportation,
5 treatment, storage, or disposal of Waste Material at or in connection with the Site,
6 other than as provided in the Interim ROD as modified by the ESD, the Work, or
7 otherwise ordered by EPA, after signature of this Consent Decree by Settling
8 Defendants;

9 d. liability for damages for injury to, destruction of, or loss of
10 natural resources, and for the costs of any natural resource damage assessments;

11 e. criminal liability;

12 f. liability for violations of federal or state law which occur
13 during or after implementation of the Remedial Action;

14 g. liability, prior to Certification of Completion of the Remedial
15 Action, for additional response actions that EPA determines are necessary to
16 achieve the Performance Criteria, but that cannot be required pursuant to
17 Paragraph 13 (Modification of the SOW or Related Work Plans);

18 h. liability for any other operable units of the San Gabriel Valley
19 Superfund Site; and

20 i. liability for any response actions at the Site that occur after the
21 later of (i) the date 8 years from the Operational and Functional Date, or (ii) the
22 date of issuance of a final Record of Decision for the Site.

23 99. Work Takeover. In the event EPA determines that Settling
24 Defendants have ceased implementation of any portion of the Work, are seriously
25 or repeatedly deficient or late in their performance of the Work, or are
26 implementing the Work in a manner that may cause an endangerment to human
27 health or the environment, EPA may assume the performance of all or any portions
28 of the Work as EPA determines necessary. Settling Defendants may invoke the

1 procedures set forth in Section XX (Dispute Resolution), Paragraph 79, to dispute
2 EPA's determination that takeover of the Work is warranted under this Paragraph.
3 Costs incurred by the United States in performing the Work pursuant to this
4 Paragraph during the period 8 years from the Operational and Functional Date,
5 shall be considered Future Response Costs that Settling Defendants shall pay
6 pursuant to Section XVI (Payments for Response Costs and Civil Penalties).

7 100. Notwithstanding any other provision of this Consent Decree, the
8 United States retains all authority and reserve all rights to take any and all
9 response actions authorized by law.

10 XXIII. COVENANTS BY SETTLING DEFENDANTS

11 101. Covenant Not to Sue. Subject to the reservations in Paragraph 102,
12 Settling Defendants hereby covenant not to sue and agree not to assert any claims
13 or causes of action against the United States relating to the Interim ROD, as
14 modified by the ESD, past response actions, Past Response Costs, Future
15 Response Costs, or this Consent Decree, including, but not limited to:

16 a. any direct or indirect claim for reimbursement from the
17 Hazardous Substance Superfund (established pursuant to the Internal Revenue
18 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,
19 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of
20 law;

21 b. any claims against the United States, including any department,
22 agency or instrumentality of the United States under CERCLA Sections 107 or
23 113 related to the Site;

24 c. any claims arising out of response actions at or in connection
25 with the Site, including any claim under the United States Constitution; the
26 California Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to
27 Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or

28 d. any direct or indirect claim for disbursement from the Puente

1 Valley Operable Unit Special Account.

2 Except as provided in Paragraph 108 (Waiver of Claim-Splitting Defenses),
3 these covenants not to sue shall not apply in the event that the United States brings
4 a cause of action or issues an order pursuant to the reservations set forth in
5 Paragraphs 96, 98 (b) - (d) or 98 (g) - (i), but only to the extent that Settling
6 Defendants' claims arise from the same response action, response costs, or
7 damages that the United States is seeking pursuant to the applicable reservation.

8 102. Settling Defendants reserve, and this Consent Decree is without
9 prejudice to, claims against the United States, subject to the provisions of Chapter
10 171 of Title 28 of the United States Code, for money damages for injury or loss of
11 property or personal injury or death caused by the negligent or wrongful act or
12 omission of any employee of the United States while acting within the scope of his
13 office or employment under circumstances where the United States, if a private
14 person, would be liable to the claimant in accordance with the law of the place
15 where the act or omission occurred. However, any such claim shall not include a
16 claim for any damages caused, in whole or in part, by the act or omission of any
17 person, including any contractor, who is not a federal employee as that term is
18 defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on
19 EPA's selection of response actions, or the oversight or approval of the Settling
20 Defendants' plans or activities. The foregoing applies only to claims which are
21 brought pursuant to any statute other than CERCLA and for which the waiver of
22 sovereign immunity is found in a statute other than CERCLA. The covenant in
23 Paragraph 101 shall not extend to any claims relating to any response actions at
24 the Site that occur after the later of (i) the date 8 years from the Operational and
25 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
26 Site.

27 103. Nothing in this Consent Decree shall be deemed to constitute
28 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42

1 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

2 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

3 104. Nothing in this Consent Decree shall be construed to create any rights
4 in, or grant any cause of action to, any person not a Party to this Consent Decree.
5 The preceding sentence shall not be construed to waive or nullify any rights that
6 any person not a signatory to this decree may have under applicable law. Each of
7 the Parties expressly reserves any and all rights (including, but not limited to, any
8 right to contribution), defenses, claims, demands, and causes of action that each
9 Party may have with respect to any matter, transaction, or occurrence relating in
10 any way to the Site against any person not a Party hereto.

11 105. The Parties agree, and by entering this Consent Decree this Court
12 finds, that the Settling Defendants are entitled, as of the Effective Date, to
13 protection from contribution actions or claims as provided by CERCLA Section
14 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree.
15 The "matters addressed" in this Consent Decree are Past Response Costs; Future
16 Response Costs; all Work required by this Consent Decree and the SOW; and all
17 other costs incurred by any person related to the Interim ROD, as modified by the
18 ESD.

19 106. Settling Defendants agree that with respect to any suit or claim for
20 contribution brought by them for matters related to this Consent Decree they will
21 notify the United States in writing no later than 60 Days prior to the initiation of
22 such suit or claim.

23 107. Settling Defendants also agree that with respect to any suit or claim
24 for contribution brought against them for matters related to this Consent Decree
25 they will notify in writing the United States within 10 Days of service of the
26 complaint on them. In addition, Settling Defendants shall notify the United States
27 within 10 Days of service or receipt of any Motion for Summary Judgment and
28 within 10 Days of receipt of any order from a court setting a case for trial.

1 108. In any subsequent administrative or judicial proceeding initiated by
2 any Party for injunctive relief, recovery of response costs, or other appropriate
3 relief relating to the Site, the Parties shall not assert, and may not maintain, any
4 defense or claim based upon the principles of waiver, res judicata, collateral
5 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
6 contention that the claims raised in the subsequent proceeding were or should have
7 been brought in the instant case; provided, however, that nothing in this Paragraph
8 affects the enforceability of the covenants not to sue set forth in Section XXII
9 (Covenants Not to Sue by Plaintiff) or in Section XXIII (Covenants by Settling
10 Defendants).

11 XXV. ACCESS TO INFORMATION

12 109. Settling Defendants shall provide to EPA, upon request, copies of all
13 documents and information within their possession or control or that of their
14 contractors or agents relating to activities at the Site or to the implementation of
15 this Consent Decree, including, but not limited to, sampling, analysis, chain of
16 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
17 correspondence, or other documents or information related to the Work. Settling
18 Defendants shall also make available to EPA, for purposes of investigation,
19 information gathering, or testimony, their employees, agents, or representatives
20 with knowledge of relevant facts concerning the performance of the Work.

21 110. Business Confidential and Privileged Documents.

22 a. Settling Defendants may assert business confidentiality claims
23 covering part or all of the documents or information submitted to Plaintiff under
24 this Consent Decree to the extent permitted by and in accordance with Section
25 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
26 Documents or information determined to be confidential by EPA will be afforded
27 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
28 confidentiality accompanies documents or information when they are submitted to

1 EPA, or if EPA has notified Settling Defendants that the documents or information
2 are not confidential under the standards of Section 104(e)(7) of CERCLA or 40
3 C.F.R. Part 2, Subpart B, the public may be given access to such documents or
4 information without further notice to Settling Defendants.

5 b. The Settling Defendants may assert that certain documents,
6 records and other information are privileged under the attorney-client privilege or
7 any other privilege recognized by federal or California law. If Settling Defendants
8 assert such a privilege in lieu of providing documents, they shall provide the
9 Plaintiff with the following: (1) the title of the document, record, or information;
10 (2) the date of the document, record, or information; (3) the name and title of the
11 author of the document, record, or information; (4) the name and title of each
12 addressee and recipient; (5) a description of the contents of the document, record,
13 or information: and (6) the privilege asserted by Settling Defendants. However,
14 no documents, reports or other information created or generated pursuant to the
15 requirements of the Consent Decree shall be withheld on the grounds that they are
16 privileged.

17 111. No claim of confidentiality shall be made with respect to any data,
18 including but not limited to all sampling, analytical, monitoring, hydrogeologic,
19 scientific, chemical, or engineering data, or any other documents or information
20 evidencing conditions at or around the Site.

21 XXVI. RETENTION OF RECORDS

22 112. Until 6 years after the Settling Defendants' receipt of EPA's
23 notification pursuant to Paragraph 51.b of Section XIV (Certification of
24 Completion), each Settling Defendant shall preserve and retain all non-identical
25 copies of records and documents (including records or documents in electronic
26 form) now in its possession or control or which come into its possession or control
27 that relate in any manner to its liability under CERCLA with respect to the Site,
28 provided, however, that Settling Defendants who are potentially liable as owners

1 or operators of the Site must retain, in addition, all documents and records that
2 relate to the liability of any other person under CERCLA with respect to the Site.
3 Each Settling Defendant must also retain, and instruct its contractors and agents to
4 preserve, for the same period of time specified above, all non-identical copies of
5 the last draft or final version of any documents or records (including documents or
6 records in electronic form) now in its possession or control or which come into its
7 possession or control that relate in any manner to the performance of the Work,
8 provided, however, that each Settling Defendant (and its contractors and agents)
9 must retain, in addition, copies of all data generated during the performance of the
10 Work and not contained in the aforementioned documents required to be retained.
11 Each of the above record retention requirements shall apply regardless of any
12 corporate retention policy to the contrary.

13 113. At the conclusion of this document retention period, Settling
14 Defendants shall notify the United States at least 90 Days prior to the destruction
15 of any such records or documents, and, upon request by the United States, Settling
16 Defendants shall deliver any such records or documents to EPA. Settling
17 Defendants may assert that certain documents, records and other information are
18 privileged under the attorney-client privilege or any other privilege recognized by
19 federal law. If Settling Defendants assert such a privilege, they shall provide EPA
20 with the following: (1) the title of the document, record, or information; (2) the
21 date of the document, record, or information; (3) the name and title of the author
22 of the document, record, or information; (4) the name and title of each addressee
23 and recipient; (5) a description of the subject of the document, record, or
24 information; and (6) the privilege asserted by Settling Defendants. However, no
25 documents, reports or other information created or generated pursuant to the
26 requirements of the Consent Decree shall be withheld on the grounds that they are
27 privileged.

28 114. Each Settling Defendant hereby certifies individually that, to the best

1 of its knowledge and belief, after thorough inquiry, it has not altered, mutilated,
2 discarded, destroyed or otherwise disposed of any records, documents, or other
3 information (other than identical copies) relating to its potential liability regarding
4 the Site since notification of potential liability by the United States or DTSC or the
5 filing of suit against it regarding the Site and that it has fully complied with any
6 and all EPA requests for information pursuant to Section 104(e) and 122(e) of
7 CERCLA, 42 U.S.C. 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. §
8 6927.

9 XXVII. NOTICES AND SUBMISSIONS

10 115. Whenever under the terms of this Consent Decree written notice is
11 required to be given or a report or other document is required to be sent by one
12 Party to another, it shall be directed to the individuals at the addresses specified
13 below, unless those individuals or their successors give notice of a change to the
14 other Parties in writing. All notices and submissions shall be considered effective
15 upon receipt, unless otherwise provided. Written notice as specified herein shall
16 constitute complete satisfaction of any written notice requirement of the Consent
17 Decree with respect to the United States, EPA, and the Settling Defendants,
18 respectively.

19 As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Att: Elizabeth F. Kroop
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-354/15

Matthew A. Fogelson
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

26 As to EPA:

Penelope McDaniel
EPA Project Manager
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 As to the Regional
2 Accounting Contact:

David Wood, PMD-6
Section Chief
Superfund Accounting Program
Policy and Management Division
75 Hawthorne Street
San Francisco, CA 94105

5 As to Settling
6 Defendants:

William Leikin
Assistant General Counsel
United Technologies Corp.
One Financial Plaza, MS 524
Hartford, CT 06101
Paul Dinardo
United Technologies Corp.
4195 Saddle Lane
West Bloomfield, MI 48322

10 XXVIII. EFFECTIVE DATE

11 116. The effective date of this Consent Decree shall be the date upon
12 which this Consent Decree is entered by the Court, except as otherwise provided
13 herein.

14 XXIX. RETENTION OF JURISDICTION

15 117. This Court retains jurisdiction over both the subject matter of this
16 action and Consent Decree and the Parties for the duration of the performance of
17 the terms and provisions of this Consent Decree for the purpose of enabling any of
18 the Parties to apply to the Court at any time for such further order, direction, and
19 relief as may be necessary or appropriate for the construction or modification of
20 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
21 resolve disputes in accordance with Section XX (Dispute Resolution) hereof or for
22 any other purpose as may be just and proper.

23 XXX. APPENDICES

24 118. The following appendices are attached to and incorporated into this
25 Consent Decree:

26 "Appendix A" is the Interim ROD.

27 "Appendix B" is the ESD.

28 "Appendix C" is a map of the Site.

1 “Appendix D” is the SOW.

2 “Appendix E” is the SEP Implementation Plan for the Woodland Duck Farm
3 Supplemental Environmental Project.

4 “Appendix F” is a draft easement.

5 XXXI. COMMUNITY RELATIONS

6 119. Settling Defendants agree to participate in the community relations
7 plan to be developed by EPA. Settling Defendants shall also cooperate with EPA
8 in providing information regarding the Work to the public. As requested by EPA,
9 Settling Defendants shall participate in the preparation of such information for
10 dissemination to the public and in public meetings which may be held or
11 sponsored by EPA to explain activities at or relating to the Site.

12 XXXII. MODIFICATION

13 120. Schedules specified in this Consent Decree for completion of the
14 Work or the SEP may be modified by agreement of EPA and Settling Defendants.
15 All such modifications shall be made in writing.

16 121. Except as provided in Paragraph 13 (Modification of the SOW or
17 Related Work Plans), no material modifications shall be made to the SOW without
18 written notification to and written approval of the United States, Settling
19 Defendants, and the Court, if such modifications fundamentally alter the basic
20 features of the selected remedy within the meaning of 40 C.F.R. §
21 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the
22 United States will provide DTSC with a reasonable opportunity to review and
23 comment on the proposed modification. Modifications to the SOW that do not
24 materially alter that document, or material modifications to the SOW that do not
25 fundamentally alter the basic features of the selected remedy within the meaning
26 of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between
27 EPA, after providing DTSC with a reasonable opportunity to review and comment
28 on the proposed modification, and Settling Defendants.

122. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING, OPPORTUNITY FOR PUBLIC COMMENT

123. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

Settling Defendants consent to the entry of this Consent Decree without further notice.

124. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties. However, the Parties' obligations pursuant to Section XXXV (Withdrawal of Response to Comments, Dismissal of Appeal, and Revocation of UAO) shall not be affected should the Court decline to approve this Consent Decree.

XXXIV. SIGNATORIES/SERVICE

125. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party they represent to this document.

126. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

127. Each Settling Defendant shall identify, on the attached signature page, the name, title, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXV. WITHDRAWAL OF COMMENTS, DISMISSAL OF APPEAL,

AND REVOCATION OF UAO

128. Upon lodging of this Consent Decree, Carrier Corporation agrees not to contest entry of the consent decree lodged in the related case, United States v. Acorn Engineering, et. al., Civ. Action No. 03-5470-ABC (FMOx) (hereinafter "Acorn Decree"). Furthermore, upon lodging of this Consent Decree, Carrier Corporation shall withdraw comments it submitted relating to the Acorn Decree.

129. Carrier Corporation filed a Motion to Intervene, opposing, among other things, entry of the Acorn Decree. Carrier Corporation's Motion to Intervene was denied in a March 19, 2004 decision by the District Court, Central District of California. Order Denying Carrier Corporation's Motion to Intervene, 221 F.R.D. 530 (C.D. Cal 2004). Carrier appealed the denial of its Motion to Intervene to the Ninth Circuit. Carrier's Ninth Circuit appeal is currently stayed. Within 7 Days after the lodging of this Consent Decree, Carrier shall dismiss with prejudice its appeal of the Order Denying Carrier Corporation's Motion to Intervene, Ninth Circuit Court of Appeals Docket No. 04-55622.

130. On or about September 13, 2001, EPA issued Carrier Corporation UAO Docket No. 2001-20, which requires Carrier Corporation, among other things, to perform the interim remedial design and remedial action for the shallow

1 groundwater zone at the Site pursuant to the Interim ROD. EPA shall revoke
2 UAO Docket No. 2001-20 within two weeks after Carrier Corporation (i)
3 withdraws its comments and any objections it may have with respect to the entry
4 of the Acorn Decree, and (ii) dismisses with prejudice its appeal of the Order
5 Denying Carrier Corporation's Motion to Intervene, 221 F.R.D. 530 (C.D. Cal.
6 2004). However, if the Court declines to enter the Consent Decree, or the United
7 States withdraws or withholds its consent to the Consent Decree because
8 comments received disclose facts or considerations which indicate that the
9 Consent Decree is inappropriate, improper, or inadequate, then EPA reserves all of
10 its rights against Settling Defendants, including, but not limited to, the right to
11 issue a new UAO.

12 XXXVI. FINAL JUDGMENT

13 131. This Consent Decree and its appendices constitute the final, complete,
14 and exclusive agreement and understanding among the Parties with respect to the
15 settlement embodied in the Consent Decree. The Parties acknowledge that there
16 are no representations, agreements or understandings relating to the settlement
17 other than those expressly contained in this Consent Decree.

18 132. Upon approval and entry of this Consent Decree by the Court, this
19 Consent Decree shall constitute a final judgment between the United States and
20 Settling Defendants. The Court finds that there is no just reason for delay and
21 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
22
23

24 SO ORDERED THIS __ DAY OF _____, 20__.

25
26
27 _____
United States District Judge
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Carrier Corporation, relating to the Puente Valley Operable Unit of the San Gabriel Valley
3 Superfund Sites.

4 **FOR THE UNITED STATES OF AMERICA:**
5 U.S. Department of Justice

6 August 15, 2005
7 Date

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

11 August 15, 2005
12 Date

MATTHEW A. FOGELSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

18 August 15, 2005
19 Date

ELIZABETH F. KROOP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Carrier Corporation, relating to the Puente Valley Operable Unit of the San Gabriel Valley
3 Superfund Sites:

4 **FOR THE UNITED STATES OF AMERICA:**
5 U.S. Environmental Protection Agency

6 7/22/05
7 Date

8 **KEITH TAKATA**
9 Director of the Superfund Division
10 U.S. Environmental Protection Agency
11 Region 9
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 7/22/05
15 Date

16 **DUSTIN MINOR**
17 Office of Regional Counsel
18 U.S. Environmental Protection Agency
19 Region 9
20 75 Hawthorne Street
21 San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Carrier Corporation, relating to the Puente Valley Operable Unit of the San Gabriel Valley
3 Superfund Sites.

4 **FOR UNITED TECHNOLOGIES CORPORATION:**

5
6
7 DATE: 20 July 2005 Signature: _____

8
9 Name: William H. Trachsel

10 Title: Senior Vice President and General Counsel
United Technologies Corp.

11 Address: One Financial Plaza, MS 524
12 Hartford, CT 06101

13 Agent Authorized to Accept Service on Behalf of Above-signed Party

14 Name (Print): William F. Leikin

15 Title: Assistant General Counsel
United Technologies Corporation

16 Address: One Financial Plaza, MS 524

17 Hartford, CT 06101

18
19 Phone Number: _____

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Carrier Corporation, relating to the Puente Valley Operable Unit of the San Gabriel Valley
3 Superfund Sites.

4 **FOR CARRIER CORPORATION:**

5 DATE: July 20, 2005 Signature: _____

6 Name: WILLIAM LEIKIN

7 Title: Attorney-in-Fact
8 Carrier Corporation

9 Address: One Financial Plaza, MS 524
Hartford, CT 06101

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): William F. Leikin

12 Title: Assistant General Counsel
13 United Technologies Corporation

14 Address: One Financial Plaza, MS 524

Hartford, CT 06101

15
16 Phone Number: _____